



South Carolina House of Representatives

Legislative Update

David H. Wilkins, Speaker of the House

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MAJOR ISSUES FROM THE 2004 LEGISLATIVE SESSION

This document summarizes many of the key issues considered by the General Assembly this year. Please note that some of these issues are addressed in more than one bill. In those instances, we have highlighted bills which made the most progress towards passage.

This report, the final 2004 update, highlights legislative activity through June 10, 2004. It is a guide to, not a substitute for, the full text of the legislation summarized. The below constituted summaries are prepared by the staff of the South Carolina House of Representatives and are not the expression of the legislation's sponsor(s) or the House of Representatives. They are strictly for the internal use and benefit of members of the House of Representatives and are not to be construed by a court of law as an expression of legislative intent.

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OVERVIEW OF THE 2004 LEGISLATIVE YEAR

The 115th South Carolina General Assembly completed its work on June 3, 2004.

Faced again with the challenge of crafting a state spending plan which meets the critical needs of State government with very limited revenue, the General Assembly agreed on a **2004-05 General Appropriations Bill** which provides half a billion dollars of property tax relief; fully funds Medicaid; repays the \$155 million deficit from 2001-02; fully funds the Conservation Bank; raises teachers' salaries \$300 above the Southeastern average; increases per-pupil expenditure; and provides State employees a three percent base pay raise.

The House and Senate also approved the **Fiscal Discipline Plan of 2004**, a bill which provides a procedure for promptly reporting and addressing any future operating deficits, and which limits growth of general fund appropriations (through Fiscal Year 2008-09) to three percent above appropriations for the preceding fiscal year.

Tax relief for property owners was approved by the General Assembly in a bill which exempts from property tax an amount of fair market value of real property sufficient to limit to twenty percent any valuation increase attributable to a countywide appraisal and equalization program.

Under legislation approved this session, South Carolina's voters will have the opportunity to decide whether to discontinue the state's **minibottle liquor requirements**. Lawmakers approved a proposed amendment to the South Carolina Constitution that would eliminate the requirement that on-premises establishments such as bars and restaurants are licensed to sell alcoholic liquors and beverages only in sealed containers of two ounces or less (minibottles). In place of this requirement, the proposed amendment authorizes the General Assembly to determine the size of containers in which alcoholic liquors or beverages are sold. The proposed constitutional amendment will be submitted to the State's voters at the upcoming general election.

The General Assembly passed legislation providing comprehensive revisions to the **Public Service Commission**, the body elected by the General Assembly to regulate the State's public utilities. The legislation establishes new qualifications for Public Service Commission candidates, places restrictions on what communications Commissioners and PSC officials may have with regulated parties, and creates the Office of Regulatory Staff as a separate state agency charged with representing the public interest in all proceedings before the Commission.

The General Assembly continued its commitment to economic development and job creation through its approval of the **Life Sciences Act**, the **Venture Capital Investment Act**, and the **Research University Infrastructure Act**. These are major

initiatives which provide incentives for businesses to locate and remain in South Carolina, which promote investment in knowledge-based technology companies in our State, and which facilitate and increase research at South Carolina's research universities. The General Assembly also approved the **South Carolina Motion Picture Incentive Act**, which provides financial incentives to the film industry and to investors in qualified South Carolina film projects, to boost our State's competitiveness with other states for filming locations.

The General Assembly approved legislation geared towards enhancing prosecution of the **use of the Internet to exploit minors**. This bill creates the felony offense of criminal solicitation of a minor and authorizes the seizure and forfeiture of equipment, including software, that is used in the commission of a violation. To combat Internet child pornography more effectively, the bill eliminates the requirement that a child-related obscenity crime must be multi-county in nature or must transpire in more than one county for the State Grand Jury to have jurisdiction.

Lawmakers approved an **expansion of the inmate DNA sampling program** to include all felons and inmates incarcerated for any other offense that carries a maximum term of imprisonment of five years or more.

The General Assembly passed the **South Carolina Small Business Regulatory Flexibility Act** which establishes a procedure to avoid the adoption of State agency regulations that are unnecessarily burdensome for small businesses. The legislation creates within the Department of Commerce, the Small Business Regulatory Review Committee to assess the costs that may be incurred by small businesses for compliance with proposed regulations and, when necessary, petition agencies to pursue less intrusive or less costly alternative methods of achieving the purpose of a proposed regulation. A small business that is adversely impacted or aggrieved in connection with the promulgation of a regulation is entitled to judicial review of agency compliance with the requirements of this legislation. An agency is also authorized to waive or reduce administrative penalties or fines for a violation of a regulation by a small business in certain cases where the violation was unintentional or promptly corrected after notification.

The General Assembly passed legislation revising South Carolina's **at-will employment** doctrine in light of recent court rulings under which employers who use employee handbooks, even with conspicuous disclaimers and employee acknowledgements, may inadvertently create a contract of employment that replaces the intended at-will employment relationship. The legislation establishes criteria for the conspicuous disclaimers that may be included on a handbook, personnel manual, or other document such that an express or implied contract of employment is not created.

Student safety was addressed in the **Safe Routes to Schools Act**, which requires municipal and county governing bodies to work with school districts to identify and reduce barriers and hazards to children walking or bicycling to and from school. Teacher safety was addressed in the **Teacher Protection Act of 2004**, a bill which

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enhances penalties against a student who assaults a person affiliated with a school in an official capacity, either on school grounds or at a school-sponsored event.

The House and Senate approved a bill which **legalizes the practice of tattooing** by persons who are not physicians. The bill mandates the use of strict sterile techniques for tattooing and prohibits tattooing of the head, face, or neck. The bill also includes other limitations on tattooing, including a provision that it is unlawful to tattoo a person under the age of twenty-one without the consent of the client's parent or legal guardian. No person under the age of eighteen may be tattooed.

Legislation was approved this session **prohibiting an unauthorized change of utility provider**, a practice commonly referred to as "slamming." The bill provides that a utility (telephone, electrical, gas, heat, etc.) may not submit a change request for a customer's utility provider without the customer's authorization. The legislation imposes fines for intentional and repeated violations.

Legislators passed a bill that exempts **bundled offerings and contract offerings made by telecommunications carriers** from regulation by the Public Service Commission. Under a bundled offering, multiple services such as basic phone service, call waiting, and Internet access, are packaged together and sold at rates, terms, or conditions that are different from those that would apply if the services were to be purchased separately. In a contract offering a telecommunications carrier enters into a written agreement with a customer to provide products or services at special rates, terms, or conditions. The legislation establishes a procedure under which the PSC is authorized to handle customer complaints about such offerings.

The General Assembly also approved the **Textile Communities Revitalization Act**, a bill which provides tax credits as an incentive for renovation, improvements, and redevelopment of abandoned textile mill sites in South Carolina.

Lawmakers approved legislation establishing criteria for the establishment of **vested rights** in certain land developments to secure the reasonable expectations of landowners who make significant investment in site evaluation, planning, development costs, consultant fees, and engineering or architectural expenses.

The **Aquatic Life Protection Act** was approved by the General Assembly to provide for the propagation and survival of a balanced indigenous community of flora and fauna.

Many of the legislative initiatives that were not enacted in the current General Assembly will most likely be reintroduced and attract the attention of legislators in the upcoming 116th General Assembly convening in January of 2005.

This year the House of Representatives approved and sent to the Senate **tort reform** legislation. The legislation passed by the House provides comprehensive revisions for the way in which the state's judicial system handles torts, which are private or civil wrongs or injuries for which the court provides a remedy in the form of an action for damages. The legislation includes: new criteria for where cases may be tried; maximum limits for awards for noneconomic damages such as pain and

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suffering and injury to reputation; limits on punitive damages that may be awarded; new standards for determining the degree of liability when multiple parties are involved; provisions for discouraging frivolous lawsuits, and a new mechanism for handling medical malpractice claims.

The House and Senate approved different versions of legislation that would revise the process for **nominating judicial candidates** for election by the General Assembly. Compromise legislation was not approved prior to adjournment.

The House approved legislation which incrementally **reduces the top marginal rate of state individual income tax** from seven percent to 4.75 percent.

The House addressed administrative government restructuring by approving the **South Carolina Restructuring Act of 2004**.

The House approved a bill establishing the **Carolina Public Charter School District**, a statewide body which would, among other things, exercise general supervision over public charter schools and grant charter status to qualifying applicants for public charter schools.

The House of Representatives passed and sent to the Senate legislation which provides that there is **no recognition of same sex marriages** under South Carolina law.

The House approved the **South Carolina Isolated Wetlands Act of 2004**, which provides a program for long-term restoration of, and for limiting degradation of, isolated wetlands.

The House of Representatives approved and sent to the Senate a bill expanding the **State Grand Jury's jurisdiction to include environmental offenses**.

The House of Representatives approved and sent to the Senate a bill establishing **firearms restrictions for criminal domestic violence offenders**.

The House approved and sent to the Senate legislation **prohibiting state use of an independent contractor lobbyist**.

The House approved the **South Carolina Dairy Stabilization Act**, a bill which, among other things, creates a board to establish a fair market breakeven price for milk producers; exercise general supervision over the state milk industry; and mediate differences between milk producers, associations, and processors.

The House approved the **Financial Literacy Instruction Act of 2004**, which requires the State Board of Education to develop or adopt curricula, materials, and guidelines for school boards to use in implementing a program of instruction on financial literacy within courses currently offered in South Carolina high schools.

MAJOR LEGISLATION THAT PASSED IN 2004

APPROPRIATIONS

2004-05 BUDGET PLAN

The House and Senate approved a budget plan for 2004-2005 which includes no new taxes and, in fact, provides significant tax relief. Highlights of the final budget plan include, but are not limited to:

STATEWIDE ITEMS

- \$155 million is appropriated to pay off deficit from FY 2001-02.
- \$39 million is appropriated for marriage penalty tax relief.
- \$13.3 million is appropriated for estate tax reduction (conforming to the Federal Code).
- \$90 million in revenue is anticipated from increased tax collections due to stepped-up enforcement by Department of Revenue.
- \$31.7 million in revenue is anticipated from sale of surplus land.
- \$33.7 million in revenue is anticipated from sale of state vehicles and closing maintenance facilities.
- Funding is included for a three percent base pay raise for all state employees.
- \$13.4 million is appropriated to partially fund the \$49.8 million increase needed to meet expenses of the State employee health insurance plan.
- State agencies received a 15% cut in travel, meals, fees and registrations, and phone expenditures.
- A State Employee serving on active duty in a combat zone who has exhausted all available leave for military purposes is allowed (under Proviso 63.43) to receive up to 30 additional days of military leave.
- The Conservation Bank was fully funded.

K-12 EDUCATION

- FY 04-05 Base Student Cost is funded at \$1,852.
- \$19 million in new funds is appropriated to bring teachers' salaries to \$300 above the projected Southeast Average of \$41,391.
- \$2.4 million is appropriated for the projected increase in National Board Certified teachers.
- \$112 million of lottery revenue is dedicated to public education; K-12 share of lottery proceeds is 32.88 percent of the lottery revenue.
- Various Education Accountability Act items were funded with a total of \$46,597,515 from the lottery.
- The K-5 Reading, Math Science & Social Studies programs were increased by \$6.5 million to a total of \$46.5 million in the lottery.

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- A new Middle School program 6-8 Reading, Math Science & Social Studies was implemented with \$2 million from unclaimed lottery prizes.
- High Schools that Work, Testing, Student Identifier and Data Collection and Report Card activities were all funded with \$6,726,380 in lottery funds.
- First Steps for School Readiness was allocated \$3 million from the unclaimed prize funds.
- All funds in excess of the \$12 million estimate for unclaimed prizes will be used for school buses and the Governor's School for Math and Science.

HEALTH AND HUMAN SERVICES

- Medicaid funding is the largest portion of the health agencies' budget.
 - \$201.6 million is appropriated to replace all non-recurring funding needed by the Medicaid agency with recurring revenue.
 - Over the last three years, total spending for the Medicaid budget has increased 39 percent and the number of persons receiving Medicaid services has increased by 25 percent.
 - Last year, 864,000 citizens received a Medicaid service: physician visit, prescription, dental care, in-home health service, nursing care, etc.

LOTTERY

- LIFE, HOPE, and Palmetto Fellows scholarships are fully funded.
- Needs Based Grants received an additional \$7.4 million for a total of \$10.4 million.
- Tuition grants received an additional \$1 million for a total of \$4 million.
- Higher Ed institutions received an additional \$2 million for Technology for a total of \$14 million.
- South Carolina State University received an additional \$2,000,000 for a total of \$5.5 million.
- ETV received \$1.4 million.
- The Higher Education Excellence Enhancement program received an additional \$500,000 plus \$1.2 million from unclaimed prizes for a total of \$6.5 million.
- Aid to County Libraries was increased by \$1.5 million for a total of \$3 million.

STATUS: H.4925, the 2004-2005 Appropriations Bill, was approved by the House and Senate, ratified (R333), and sent to the Governor. Subsequently, the Governor sent to the House 106 vetoes totalling \$36 million in funds. The House overrode 105 of the 106 vetoes, and the Senate overrode all but seven of the vetoes.

Among the vetoes sustained by the Senate was Veto 74, which transferred the Division of Aeronautics from the Department of Commerce to the Department of Transportation.

FISCAL DISCIPLINE PLAN OF 2004

The House and Senate approved H.4475, the "Fiscal Discipline Plan of 2004." This bill requires that by August 31 of each year, the Comptroller General shall report to the State Budget and Control Board (the Board) the amounts of general fund revenues and expenditures recorded for the preceding fiscal year and any resulting surplus or deficit of the general fund. If the Comptroller General determines that annual expenditures exceeded revenues, an operating deficit must be declared in the report and the Board must meet within sixty days with the deficit as the first item on the meeting agenda.

The bill provides that for fiscal years 2004-05 through 2008-09, total general fund appropriations for the fiscal year may not exceed appropriations for the preceding fiscal year by more than three percent. The bill provides for certification of general fund appropriations allowed for a fiscal year, including a requirement that the calculation of such funds must not include non-recurring funds from the previous year. The bill requires that for these fiscal years, the Governor's budget proposal may not be submitted until the proposal is certified by the Office of State Budget as complying with these requirements. Also, the bill prohibits third reading of an appropriation bill in the House and Senate unless such certification is received by the presiding officer of each body.

The bill also provides for repayment of the fiscal year 2001-02 general fund operating deficit, and provides that any surplus funds remaining after the deficit is repaid must be used to restore the General Reserve Fund to the amount required under the South Carolina Constitution and the S.C. Code of Laws.

STATUS: H.4475 has been approved by the House and Senate and ratified (R.384).

BUSINESS/ECONOMIC DEVELOPMENT

AT-WILL EMPLOYMENT

The General Assembly passed and the Governor signed into law H.3448, a bill pertaining to at-will employment. This legislation revises South Carolina's at-will employment doctrine in light of recent court rulings under which employers who use employee handbooks, even with conspicuous disclaimers and employee

acknowledgements, may inadvertently create a contract of employment that replaces the intended at-will employment relationship. The legislation provides that it is the public policy of this State that a handbook, personnel manual, policy, procedure, or other document issued by an employer or its agent after June 30, 2004, shall not create an express or implied contract of employment if it is conspicuously disclaimed. Such a disclaimer in a handbook or personnel manual must be in underlined capital letters on the first page of the document and signed by the employee. For all other documents, the disclaimer must be in underlined capital letters on the first page of the document. Whether or not a disclaimer is conspicuous is a question of law.

STATUS: Having passed the General Assembly, H.3448 was signed into law by the Governor on March 15, 2004 (Act 185).

DEFRAUDING SECURED CREDITORS

See summary under Crime/ Law Enforcement/ Corrections

LIFE SCIENCES, VENTURE CAPITAL, RESEARCH UNIVERSITY INFRASTRUCTURE

The House and Senate approved S.560, a comprehensive bill which includes major economic development initiatives:

The **LIFE SCIENCES ACT** provides economic development incentives for businesses to establish in the state certain life sciences facilities engaged in pharmaceutical, medicine, and related laboratory instrument manufacturing, processing, or research and development.

The **VENTURE CAPITAL INVESTMENT ACT** establishes within the Department of Commerce a fund to promote investment in knowledge-based technology companies.

The **RESEARCH UNIVERSITY INFRASTRUCTURE ACT** increases the limitation on general obligation debt to six percent with the additional debt service capacity used to advance economic development, create a knowledge based economy, and to facilitate and increase research within the State at the research universities. The amount of the general obligation debt issued under the act that may be outstanding at any one time may not exceed \$250 million. 88% of funds authorized under this act are to be allocated among the state's research universities (USC, Clemson, and MUSC) for research infrastructure projects approved by the Research Centers of Excellence Review Board. 12% of funds authorized under the act are to be allocated among the state's other public institutions of higher learning.

S.560 also includes:

- Measures authorizing greater flexibility for public institutions of higher learning;
- Authority for USC-Sumter to offer four-year degrees;
- Provisions that no campus of USC may be closed without prior authorization of the General Assembly;
- Establishment of a committee to study the feasibility and need for a school of law at S.C. State University in Orangeburg;
- Provisions for financing a national and international convention center and tourism training project in Myrtle Beach under the State General Obligation Economic Development Bond Act.

*STATUS: **S.560** was approved by the House and Senate and vetoed by the Governor. The General Assembly overrode the veto and the Act took effect March 17, 2004 (Act No. 187).*

MARINE TERMINAL AT PORT ROYAL

See summary below under State/Local Government

MINIBOTTLES

See summary under Tax Issues

MOTION PICTURE/COMMERCIAL ADVERTISEMENT INCENTIVES

The General Assembly approved **H.4968**, a bill enacting the South Carolina Motion Picture Incentive Act. This bill is intended to provide a financial incentive to the film industry so that South Carolina might compete successfully with other states for filming locations. Incentives in the bill include, but are not limited to:

- A state sales and use tax exemption to motion picture production companies that expend at least \$250,000 on the filming or production of one or more motion pictures in South Carolina within a consecutive twelve month period, under conditions specified in the bill;
- A tax rebate to motion picture production companies for the employment of persons subject to South Carolina income tax withholdings in connection with production of a motion picture; the rebate is equal to five percent of the total payroll for these persons when total production costs in South Carolina are at least one million dollars during the taxable year;
- Thirteen percent of the general fund portion of admissions tax collected by the State must be funded annually for the use of the South Carolina Film Commission. The Film Commission may rebate to a motion picture production company up to seven percent of the costs of goods and services purchased by the production company in the State if the production company has a minimum in-state expenditure of one million dollars.

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- One percent of the general fund portion of admissions tax collected by the State must be allocated to the Film Commission to promote collaborative production and educational efforts between institutions of higher learning in South Carolina and motion picture related entities.
- Under certain conditions, the Film Commission may negotiate below-market rates for temporary use of underutilized state property, and such negotiations and use are exempt from provisions of the South Carolina Procurement Code.
- The State or its political subdivisions may not charge a location fee for properties they own if the properties are used for seven or fewer days as a location in the production of a motion picture. A property may not be used for more than a total of twenty-one days without location fees in a calendar year. The production company may be on site no longer than seven days within a thirty-day period without a location fee charge.
- The Department of Commerce is authorized to form a foundation to solicit donations for the recruitment of motion pictures.
- Motion picture production companies, under conditions specified in the bill, are provided a rebate of all of the state sales taxes on accommodations paid by the company for company employees who have stayed in accommodations in South Carolina for an aggregate of thirty days over a twelve month period.

The bill requires specified credit to the State on the end credit roll of a motion picture that utilizes a South Carolina tax credit or rebate, but the bill also reserves the right of the State to refuse such credit.

The bill also provides a tax credit against state income tax for production companies that produce a commercial production being an advertisement for multi-market distribution as provided and described in the bill. This tax credit may be earned by the company at the time of its investment in a state-certified production and must be calculated as a percentage of the investment according to the total base investment dollars certified. If total base investment is over \$500,000 in the aggregate during the calendar year, the company is allowed a tax credit of ten percent of the actual South Carolina investment made by that company. The State has annually one million dollars in total tax credits to disburse to all eligible production companies, and the credit must be distributed to companies in the same order that the company's application for the credit is approved.

The bill provides a tax credit of an amount equal to twenty percent (but not more than \$100,000) of a taxpayer's cash investment in a company that develops or produces a qualified South Carolina motion picture project. The bill also allows and provides for a taxpayer to claim a credit equal to twenty percent of the the taxpayer's investment in the company that constructs, converts, or equips a motion

picture production or post-production facility in this State. In such instances, the total amount of credit which may be claimed by all taxpayers on a single production or post-production facility may not exceed five million dollars.

*STATUS: **H.4968** was approved by the House and Senate and has been ratified (R.432).*

PURCHASE OF MULTIPLE PISTOLS

See summary under Crime/ Law Enforcement/ Corrections.

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

See summary under State/Local Government

TATTOOING

Current South Carolina law provides that it is unlawful for a person to tattoo any part of the body of another person. The only exception is for a licensed physician if, in his or her medical opinion, it is necessary to tattoo a person when performing cosmetic or reconstructive surgery.

The House and Senate both have approved the conference report on **S.104**, a bill which legalizes the practice of tattooing by persons who are not physicians. As approved by the House and Senate, the bill mandates the use of strict sterile techniques for tattooing and prohibits tattooing of the head, face or neck. The bill also makes it unlawful for anyone to perform tattooing on a person:

- under the age of 21 without the consent of the client's parent or legal guardian (no person under the age of 18 may be tattooed);
- impaired by drugs or alcohol, or
- with a skin rash, pimples, boils, keloids, sunburn, infections or unhealthy conditions at the tattoo site.

Every tattoo facility in South Carolina will be required to register with DHEC. A tattoo artist must be at least 21 years old, comply with OSHA guidelines, have a current Red Cross First Aid Certification and CPR certification, and annually complete a course in blood borne pathogens and tattooing infection control approved by DHEC. A tattoo artist must conspicuously display these certifications in the facility where he works. All tattoo artists will be required to use only single-use, disposable needles.

In order for a tattoo facility to receive a DHEC license the operator must:

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- obtain a copy of the DHEC sterilization, sanitation and safety standards for tattoo facilities and commit to meet these standards;
- pass an initial facility inspection and pay a licensure fee to be set by DHEC;
- have a certified copy of an ordinance passed by the local governing body where the business will be located approving the tattooing of persons within its jurisdiction;
- display the facility license and notice of blood donor disqualification regulations.

A tattoo facility may only provide tattooing and may not engage in any other retail business including, but not limited to, the sale of goods or performing any form of body piercing other than tattooing.

The bill requires DHEC to establish standards and promulgate regulations for tattoo artists and tattoo facilities. It gives DHEC the authority to conduct inspections of tattoo facilities and DHEC may revoke, suspend, or refuse to issue or renew a tattoo permit for violation of the law. The bill prohibits DHEC from issuing a permit for a facility if the location is within 1000 feet of a church, school or playground. A person who intends to apply for a tattoo facility license must advertise at least once a week for three consecutive weeks in a local newspaper.

The bill specifies that all fees and monetary penalties collected must be used exclusively to support the tattoo licensure program. It authorizes DHEC to charge an additional fee, if necessary, to cover the cost of on-site facility inspections.

The bill provides that a person who violates a provision of this act is guilty of a misdemeanor and must be fined up to \$2500 or imprisoned up to one year or both. It also specifies that money collected from fines must be remitted to DHEC and used to offset the cost of administering the tattoo regulation program.

The bill also includes a provision that clarifies the authority of a physician or surgeon to delegate the task of tattooing a patient to a member of the doctor's staff. Another section of the code of laws, §40-47-60, already authorizes a doctor to a direct physician's assistant or other supervised staff to perform certain tasks according to their level of training and in accordance with rules and regulations of the State Board of Medical Examiners. The bill also clarifies a doctor's authority to tattoo a patient in situations where it might not be strictly necessary but is appropriate to restore a natural appearance.

*STATUS: **S.104** was approved by the House and Senate and has been ratified (R.338).*

TEXTILE COMMUNITIES REVITALIZATION ACT

The House and Senate approved **S.1075**, the Textile Communities Revitalization Act. The purpose of this act is to create an incentive for renovation, improvements, and redevelopment of abandoned textile mill sites in South Carolina. This bill provides, under specified conditions, that a taxpayer who improves, renovates, or

redevelops an eligible site is eligible for either a tax credit against real property taxes levied by local taxing entities equal to twenty-five percent of the rehabilitation expenses made to the site times the local taxing entity ratio of each local taxing entity that has consented to the tax credit, or a credit against taxes to which the state's historic credit may apply equal to twenty-five percent of the rehabilitation expenses.

*STATUS: **S.1075** was approved by the House and Senate and has been signed by the Governor (Act No. 227).*

VESTED RIGHTS ACT

The General Assembly passed **H.3858**, the "Vested Rights Act." This legislation provides for the establishment of vested rights in certain land developments to secure the reasonable expectations of landowners who make significant investment in site evaluation, planning, development costs, consultant fees, and engineering or architectural expenses. The legislation provides that a vested right is established for two years upon the approval of a site-specific development plan. On or before July 1, 2005, a local government body must provide for: (1) the establishment of a two-year vested right in an approved site specific development plan; and (2) a process by which the landowner of real property with a vested right may apply at the end of the vesting period to the local governing body for an annual extension of the vested right. The local governing body must approve applications for at least five annual extensions of the vested right unless an amendment to the land development ordinances or regulations has been adopted that prohibits approval. The legislation identifies affirmative governmental acts allowing development of a specific project. The legislation provides that a vested right is not a personal right, but attaches to and runs with the applicable property.

*STATUS: Having passed the House of Representatives and the Senate, **H.3858** was ratified on June 2, 2004.*

CRIME/ LAW ENFORCEMENT/CORRECTIONS

CHILDREN'S ADVOCACY CENTERS

The General Assembly passed **S.500**, a bill authorizing children's advocacy centers, and the Governor signed the legislation into law. The legislation authorizes Children's Advocacy Centers as a means of coordinating a multi-agency response to child maltreatment and assist in the investigation and assessment of child abuse. Such advocacy centers are designed to enhance safety and minimize trauma for children undergoing forensic interviews, medical examinations, and case reviews. Centers must provide therapeutic counseling services, support services for the child

and non-offending family members, court advocacy, consultation, and training for professionals who work in the area of child abuse and neglect, to reduce negative impact to the child and break the cycle of abuse. The legislation establishes criteria for the operation of advocacy centers.

STATUS: Having passed the General Assembly, S.500 was signed into law by the Governor on February 18, 2004 (Act 177).

DEFRAUDING SECURED CREDITORS

The General Assembly passed H.4470, a bill establishing the offense of defrauding secured creditors. The bill provides that it is a violation for a person intentionally to sell or dispose of personal property that is subject to a perfected security interest, with the intent to defraud the secured party, without the written consent of the secured party and without paying the debt secured by the perfected security interest within ten days after sale or disposal or, in that time, depositing the amount of the debt with the clerk of the court of common pleas for the county in which the secured party resides. If the value of the personal property subject to a perfected security interest is worth: (1) one thousand dollars or less, a violator is guilty of a misdemeanor triable in the magistrate's court and, upon conviction, must be fined not more than five hundred dollars and/or imprisoned not more than thirty days; (2) more than one thousand dollars but less than five thousand dollars, a violator is guilty of a felony and, upon conviction, must be fined in the discretion of the court and/or imprisoned not more than five years; (3) five thousand dollars or more, a violator is guilty of a felony and, upon conviction, must be fined in the discretion of the court and/or imprisoned not more than ten years.

STATUS: Having passed the House of Representatives and the Senate, H.4470 was ratified on June 3, 2004.

INMATE DNA SAMPLING PROGRAM EXPANSION

The General Assembly passed H.3594 and the Governor signed the bill into law on May 12, 2004. The legislation provides for the expansion of the inmate DNA sampling program to include all felons and inmates incarcerated for any other offense that carries a maximum term of imprisonment of five years or more. The legislation expands the state's inmate deoxyribonucleic acid (DNA) sampling program by requiring all inmates convicted or adjudicated delinquent of a felony or any other offense that carries a maximum term of imprisonment of five years or more to provide DNA samples for inclusion in the database maintained by the State Law Enforcement Division (SLED). The legislation provides that SLED must securely store DNA samples. The samples are confidential and must remain in the custody of SLED or a private laboratory designated by SLED if the laboratory's standards for confidentiality and security are at least as stringent as those of SLED.

STATUS: Having passed the General Assembly, H.3594 was signed into law by the Governor on May 12, 2004 (Act 230).

INTERNET EXPLOITATION OF MINORS

The General Assembly passed and the Governor signed into law H.4451, legislation pertaining to criminal solicitation and exploitation of minors. Notably, the legislation is geared towards enhancing prosecution of the use of the Internet to exploit minors. This bill creates the offense of criminal solicitation of a minor to apply to situations where an individual at least eighteen years of age knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity or a violent crime or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen. A violator is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars and/or imprisoned for not more than ten years. Equipment, including software, that is used in the commission of a violation is subject to seizure and forfeiture. The bill also authorizes such seizure and forfeiture of equipment used in the commission of third degree exploitation of a minor. To combat Internet child pornography more effectively, the bill eliminates the requirement that a child-related obscenity crime must be multi-county in nature or must transpire in more than one county for the State Grand Jury to have jurisdiction. The bill also increases penalties for numerous offenses involving minors and obscenity laws and the exploitation of minors.

STATUS: Having passed the General Assembly, H.4451 was signed into law by the Governor on April 26, 2004 (Act 208).

PURCHASE OF MULTIPLE PISTOLS

The General Assembly passed and the Governor signed into law H.3442, a bill authorizing the purchase of multiple pistols during a single transaction. This bill revises provisions relating to the application a person must complete before purchasing a pistol, and restrictions placed on a person who purchases a pistol, so as to eliminate the provisions that prohibit a person from purchasing more than one pistol on an application and purchasing more than one pistol during each thirty-day period.

STATUS: Having passed the General Assembly, H.3442 was signed into law by the Governor on May 24, 2004 (Act 242).

EDUCATION

SAFE ROUTES TO SCHOOL ACT

The House and Senate approved H.4740, a bill which enacts the South Carolina Safe Routes to School Act. This bill requires municipal and county governing bodies to work with school districts in their jurisdiction to identify barriers and hazards to children walking or bicycling to and from school. The bill authorizes counties, municipalities, and districts to develop plans for funding improvements to reduce such barriers and hazards. The bill also authorizes and provides for school districts statewide to establish a Safe Routes to School Coordinating Committee and authorizes and provides for schools within the district to establish a Safe Routes to School Team, to help carry out the purposes of the bill. The bill also designates the first Wednesday of October of each year as "Walk or Bicycle with Your Child to School Day."

STATUS: H.4740 was approved by the House and Senate and has been ratified (R.428).

TEACHER PROTECTION ACT OF 2004

The House and Senate approved approved the South Carolina Teacher Protection Act of 2004. This bill provides that a student who commits simple assault against a person affiliated with a school in an official capacity when the offense occurs on school grounds or at a school-sponsored event, is guilty of a misdemeanor punishable by a fine of up to \$500, or imprisonment of up to thirty days, or both. The bill provides that a student who commits assault and battery other than one that is aggravated, against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-sponsored event, is guilty of a misdemeanor punishable by a fine up to five thousand dollars, imprisonment of up to one year, or both. The bill provides that a student who commits assault and battery of a high and aggravated nature against a person affiliated with a school in an official capacity, when the offense occurs on school grounds or at a school-sponsored event, is guilty of a felony punishable by a fine up to five thousand dollars, imprisonment of up to ten years, or both.

STATUS: S.131 was approved by the House and Senate and has been ratified (R.386).

ENVIRONMENT

AQUATIC LIFE PROTECTION ACT

The House and Senate approved H.4070, the Aquatic Life Protection Act. This bill modifies a water quality test currently being used by the Department of Health and Environmental Control (DHEC) to determine water discharge limits. The test, which measures reproductive rates of a water flea to test the quality of the water discharge, has drawn criticism from industry experts who argue that it is too unreliable. The bill is geared to provide for the propagation and survival of a balanced indigenous community of flora and fauna. The bill provides that the Department of Health and Environmental Control (DHEC) may only impose NPDES (Natural Pollutant Discharge Elimination System) permit limitations for whole effluent toxicity ('WET') expressed in terms of survival endpoints where, based on the mixing zone authorized in the bill, DHEC determines that a discharge has the reasonable potential to cause or contribute to an excursion of water quality criterion in DHEC Regulation 61-68 (Water Classifications and Standards), other than numeric criteria for specific pollutants, that apply to the protection of indigenous aquatic organisms. The bill requires and provides for DHEC to promulgate regulations to implement WET tests that incorporate the findings of the study required by the bill. The bill provides that until DHEC promulgates such regulations as described in the bill, DHEC may use sublethal WET test failures associated with a specific discharge only for purposes specified in the bill. The bill delineates requirements for DHEC for purposes of performing WET reasonable potential determinations for a specific discharge and, where justified, setting WET permit limitations for that discharge. The bill requires DHEC to establish formal data quality objectives that define the level of accuracy and precision necessary to correctly evaluate WET test and establish an enhanced laboratory certification program to implement those objectives. The bill requires DHEC to disclose within certain NPDES permits the number of WET limit excursions that are expected to arise during the permit term due to certain specified factors. The bill requires that no later than one year after the effective date of the bill, DHEC must promulgate regulations consistent with the use reclassification provisions of Regulation 61-68(E)(6) and conforming with applicable EPA regulations guidance, to allow temporary variances from WET-based requirements or permit limits for a period of three years, subject to review and subsequent renewals.

STATUS: H.4070 was approved by the House and Senate and has been ratified (R.415).

HEALTH AND HUMAN SERVICES

NURSES' PRACTICE ACT

The House and Senate approved S.898, a bill which rewrites the Practice Act for Nurses to make it conform to the administrative framework established for all

boards and commissions administered by the Department of Labor, Licensure and Regulation (LLR). The bill also makes the following substantive changes:

- Increases the Board of Nursing membership to 10 by adding a lay person to the board and provides the chair of the State Board Medical Examiners serves as an advisory, nonvoting member;
- Authorizes the Board to collect information to report disciplinary actions to national databanks of disciplinary information;
- Updates and clarifies definitions related to the practice of nursing and incorporates definitions already used in Board of Nursing regulations;
- Revises licensure of Advanced Practice Registered Nurses (APRN) to allow them to supervise Licensed Practical Nurses (LPN) and prescribe controlled substances in Schedules III-V if authorized in individualized practice protocols approved by both the Board of Nursing and the Board of Medical Examiners;
- Requires proof of proficiency in the English language for applicants and requires Commission on Graduates of Foreign Nursing Schools certificate for foreign educated registered nurse applicants;
- Redefines misconduct to include ethical violations and adds committing an act of moral turpitude as grounds for disciplinary action;
- Provides options for demonstrating continuing competency through continuing education, national certification or re-certification, and employer verified work history.

*STATUS: **S.898** has been approved by both the House and Senate and has been signed by the Governor (Act No.225).*

INSURANCE

CAPTIVE INSURANCE COMPANY REVISIONS

The General Assembly passed **H.5002**, a bill that includes revisions to the laws governing captive insurance companies, which insure only the risks of parent or affiliated companies. The legislation authorizes the formation of Special Purpose Financial Captives, which allow for the securitization of risks for captive insurance companies by the sale of securities to investors. The securities are similar to a bond and pay interest or dividends until a specified maturity date at which time the principal is returned unless a triggering event (e.g. hurricane, earthquake, terrorism, etc.) has occurred. Insurers cede certain risks to the SPFC for a specified premium. The proceeds from the sale of securities are held in trust and are available to pay the obligations, which have been ceded by insurers should a triggering event occur or to repay the principal to the investors should a triggering event not occur.

The legislation authorizes the formation of a pure or special purpose captive as a non-profit corporation. The legislation also makes revisions regarding such matters

as confidentiality requirements, financial requirements for sponsored captives, fixed and surplus capital requirements, and redomestication.

STATUS: Having passed the House of Representatives and the Senate, H.5002 was ratified on June 3, 2004.

DRIVING PRIVILEGES SUSPENDED WHILE VEHICLE IS UNINSURED

The General Assembly passed and the Governor signed into law S.1148. Under this legislation, a vehicle owner's driving privileges are suspended automatically when the vehicle becomes uninsured. Regarding the suspension of the license plate of an uninsured motor vehicle, an individual has 20 days (rather than 45 days) to verify that his motor vehicle is insured or exempt from the financial security requirements before his driving privileges and vehicle license plates are suspended. The legislation provides that insurers are authorized to charge customers with lapses in insurance certain administrative fees to defray costs of complying with uninsured motorist reporting requirements.

STATUS: Having passed the General Assembly, S.1148 was signed into law by the Governor on May 24, 2004 (Act 241).

PROPERTY AND CASUALTY INSURANCE PERSONAL LINES MODERNIZATION ACT

The General Assembly passed S.686, the Property and Casualty Insurance Personal Lines Modernization Act. The legislation is prompted by a lack of affordability and availability with respect to homeowners' coverage along the coast. The legislation streamlines the rate approval process in the hopes of attracting more insurers to enter the market in South Carolina, thereby giving consumers more options. The bill allows for "flex rating" (using rating bands of plus or minus 7%, currently used with respect to automobile insurance coverage). When specified criteria are met, the Director of the Department of Insurance is authorized to declare the market competitive. If such a declaration is made, a "file and use" method replaces the flex rating method. Under this method, the Department of Insurance has thirty days to review a filing. If there is no response from the Department in that period, then the company is authorized to use the rate or form. The legislation includes provisions allowing for the involvement of the Department of Consumer Affairs as well as the Administrative Law Court. The legislation also incorporates the notice requirements with respect to renewals and cancellations that are currently applied to automobile insurance coverage. The legislation also responds to a particular consumer concern regarding inquiries. Under current law, a company can consider inquiries (not actual claims made) when deciding whether or not to non-renew a homeowners' policy. This legislation prohibits that practice.

*STATUS: Having passed the Senate and the House of Representatives, **S.686** was ratified on June 3, 2004.*

PUBLIC UTILITIES

ELECTRIC COOPERATIVES

The General Assembly passed **S.844**, a bill revising provisions for electric cooperatives. This legislation removes the current limitation that confines the service rights of electric cooperatives to rural areas. The current restriction prevents an electric cooperative from entering into service agreements in a town with a population over 2,500. Under the legislation, an electric cooperative is authorized to serve customers within previously assigned areas or unassigned areas after annexation or incorporation into a municipality, subject to the consent of the municipality. The legislation also protects the rights of investor-owned utilities to serve within previously assigned areas or unassigned areas after annexation or incorporation into a municipality, subject to the consent of the municipality.

*STATUS: The General Assembly passed **S.844**, and the bill became law without the Governor's signature on February 19, 2004 (Act 179).*

MUNICIPAL BUSINESS LICENSE TAX ON TELECOMMUNICATIONS PROVIDERS

See summary under Tax Issues.

PUBLIC SERVICE COMMISSION REFORM

The General Assembly passed and the Governor signed into law **S.208**, comprehensive Public Service Commission reform legislation. This legislation establishes new provisions regarding **qualifications, screening, and terms of membership for the Public Service Commission**, the seven-member body elected by the General Assembly to regulate South Carolina's public utilities. The legislation requires a candidate for the PSC to have a college degree and a background of substantial duration and an expertise in at least one of the following: energy issues; telecommunication issues; consumer protection and advocacy issues; water and wastewater issues; finance, economics, and statistics; accounting; engineering; or law. Commissioners elected in 2004 are exempted from the educational and background requirements. The Review Committee may waive the background requirements with a three-fourths vote. The bill provides for the election of commissioners in staggered terms. No member of the General Assembly or member of his immediate family shall be elected to the commission while the member is serving in the General Assembly, nor for a period of four years after the member

either ceases to be a member of the General Assembly or fails to file for election. The bill restricts a candidate's seeking of a pledge of support from a member of the General Assembly or the offering of such a pledge until after the report on the qualifications of nominees has formally released to the General Assembly.

The legislation establishes the **Office of Regulatory Staff (ORS)**, a separate state agency charged with representing the public interest in all proceedings before the commission. The Executive Director of the ORS must be an attorney with at least eight years experience and be nominated by the Review Committee and appointed by the Governor for a six-year term. The Consumer Advocate's duties to represent consumers in public utility matters are to be eliminated as of January 1, 2005.

The legislation establishes the **State Regulation of Public Utilities Review Committee**. Its duties include nominating candidates for the commission, nominating a candidate to serve as executive director of the Office of Regulatory Staff and conducting annual performance reviews of the commission and the Office of Regulatory Staff.

The legislation prohibits ***ex parte* communications**: No person may communicate regarding any issue that is or can reasonably be expected to become an issue in any proceeding with any person without notice and opportunity for all parties to participate in the communication. A violation would be a misdemeanor punishable by \$250 or up to 6 months prison. Exempt communications are listed. A person can communicate regarding any fact law, or other matter that is or can reasonably be expected to become an issue in a proceeding for the purposes of an allowable *ex parte* communication briefing if: (1) the Executive Director of ORS attends and files a certification that the requirements of this section are met; (2) every person present files statement with the Executive Director within forty-eight hours summarizing the discussion; (3) every person present files certification with Executive Director that no commitment, predetermination, or prediction was requested or given; and (4) every commissioner or commission employee present certifies that they will grant every other person requesting a briefing on the same subject matter similar access and opportunity. Initial briefings must be held twenty days prior to the hearing on the matter. Responsive briefings may be held ten days prior to the hearing.

Under the legislation, commissioners are held accountable to the Code of Judicial Conduct. The legislation requires commissioners to devote full time to their PSC duties. The legislation requires commissioners and employees to attend six hours of continuing education on ethics and the Administrative Procedures Act each year. The legislation prohibits commissioners from being employed or retained by a public utility for one year after serving.

*STATUS: Having passed the General Assembly, **S.208** was signed into law by the Governor on February 18, 2004 (Act 175).*

TELECOMMUNICATIONS CARRIERS' BUNDLED AND CONTRACT OFFERINGS

The General Assembly passed H.3080, legislation that exempts bundled offerings and contract offerings made by telecommunications carriers from regulation by the Public Service Commission. Under a bundled offering, multiple services such as basic phone service, call waiting and Internet access, are packaged together and sold at rates, terms, or conditions that are different from those that would apply if the services were to be purchased separately. In a contract offering a telecommunications carrier enters into a written agreement with a customer to provide products or services at special rates, terms, or conditions. The legislation provides that upon the filing of a complaint by an end use purchaser of a bundled offering or a contract offering, the commission may enforce the terms and conditions of such an offering under the same principles that apply when a court of general jurisdiction enforces the terms and conditions of an unregulated contract between two parties. No one other than the end user purchaser that filed the complaint and the telecommunications carrier providing the bundled offering or contract offering that is the subject of such complaint shall be a party to any complaint proceeding before the commission.

STATUS: Having passed the House of Representatives and the Senate, H.3080 was ratified on June 3, 2004.

UNAUTHORIZED CHANGE OF UTILITY PROVIDER PROHIBITED

The General Assembly passed H.3080, a bill prohibiting an unauthorized change of utility provider, a practice commonly referred to as "slamming." The bill provides that a utility (gas, heat, water, sewerage collection and disposal, street railway service, telephone, and electrical) may not submit a change request for a customer's utility provider without the customer's authorization. Techniques approved by state and federal agencies must be used when changing a customer's utility provider. Under the legislation, a violator of the anti-slamming provisions is liable to the customer for all charges incurred by the customer, in excess of those normally incurred through his designated provider, during the period of the unauthorized change. A telephone utility that violates the provisions is liable as provided under Federal Communications Commission guidelines. A utility that willfully, knowingly, or repeatedly violates these anti-slamming provisions is subject to a fine of not less than two thousand dollars nor more than ten thousand dollars for each violation. The fines are to be collected and retained by the Public Service Commission to offset costs associated with this legislation.

STATUS: Having passed the House of Representatives and the Senate, H.3080 was ratified on June 3, 2004.

UTILITY FUEL COSTS RELATED TO PURCHASED POWER

The General Assembly passed **S.208** which includes a provision clarifying the meaning of "fuel costs related to purchased power," such that utilities are allowed to recover fuel costs associated with the purchasing of power either by economy purchase in the wholesale market or a capacity purchase. Without the clarification utilities are authorized to recoup only actual costs of fuel.

*STATUS: Having passed the General Assembly, **S.208** was signed into law by the Governor on February 18, 2004 (Act 175).*

STATE/LOCAL GOVERNMENT

MARINE TERMINAL AT PORT ROYAL

The House and the Senate approved **H.4901**, regarding operation of a marine terminal at Port Royal. This bill provides that the State Ports Authority has no statutory responsibility to operate a marine terminal at Port Royal, and requires that marine operations at Port Royal shall cease as soon as practicable. The bill also requires and provides for the State Ports Authority to sell all its real and personal property at Port Royal, and requires that terms of the sale, except for certain parcels which may be under long-term contract, may not extend beyond December 31, 2006. Provisions for sale of the property include, but are not limited to, a requirement that the property must be appraised and sold at fair market value. All proceeds from the sale must be retained by the State Ports Authority, except that the Town of Port Royal has the right to petition the Budget and Control Board and may be allocated a portion of up to five percent of the net proceeds. To receive these proceeds, the Town of Port Royal must show that the allocation is necessary to pay for infrastructure needs associated with the closing of the port.

*STATUS: **H.4901** was approved by both the House and Senate and has been ratified (R.374).*

MUNICIPAL BUSINESS LICENSE TAX ON TELECOMMUNICATIONS PROVIDERS

See summary under Tax Issues

PUBLIC SERVICE COMMISSION REFORM

See summary under Public Utilities.

SAFE ROUTES TO SCHOOL ACT

See summary above under Education.

SMALL BUSINESS REGULATORY FLEXIBILITY ACT

The General Assembly passed H.4130, the "South Carolina Small Business Regulatory Flexibility Act of 2004" and the Governor signed the bill into law. The legislation establishes a procedure to avoid the adoption of regulations that are unnecessarily burdensome to small businesses.

The bill establishes the Small Business Regulatory Review Committee within the South Carolina Department of Commerce. The committee shall consist of eleven members with two-year terms of service: (1) five members to be appointed by the Governor; (2) three members to be appointed by the President Pro Tempore of the Senate; and (3) three members to be appointed by the Speaker of the House of Representatives. In addition, the Chairman of the Senate Labor, Commerce and Industry Committee and the Chairman of the House Labor, Commerce and Industry Committee, or their designees, shall serve as nonvoting, ex officio members of the committee. Appointments to the committee must be representative of a variety of small businesses in this State. All appointed members shall be either current or former owners or officers of a small business.

Under the legislation, before an agency submits to the General Assembly for review a regulation that may have a significant adverse impact on small businesses, the agency, if directed by the Small Business Regulatory Review Committee, shall prepare an economic impact statement that includes the following: (a) an identification and estimate of the number of small businesses subject to the proposed regulation; (b) the projected reporting, record keeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record; (c) a statement of the economic impact on small businesses; and (d) a description of less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, an agency proposing such a regulation must, if directed by the Small Business Regulatory Review Committee, prepare and submit a regulatory flexibility analysis in which the agency, where consistent with health, safety, and environmental and economic welfare, shall consider utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing significant adverse impact on small businesses. In cases where the Small Business Regulatory Review Committee determines that information in addition to the agency's economic impact statement is needed, the committee may request the Office of Research and Statistics of the Budget and Control Board to prepare a final assessment report.

The legislation also establishes a process under which the Small Business Regulatory Review Committee may petition an agency that has promulgated regulations opposing all or part of a regulation that has a significant adverse effect on small business. Agencies must review their regulations every five years to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of the legislation.

A small business that is adversely impacted or aggrieved in connection with the promulgation of a regulation is entitled to judicial review of agency compliance with the requirements of this legislation.

The legislation provides that an agency authorized to assess administrative penalties or fines upon a business may waive or reduce an administrative penalty/fine for a violation of a regulation by a small business if the: (a) small business corrects the violation within thirty days or less after receipt of a notice of violation or citation; or (b) violation was the result of an excusable misunderstanding of the agency's interpretation of a regulation. This waiver/reduction provision does not apply if: (a) a small business has been notified previously of the violation of a regulation by the agency and has been given an opportunity to correct the violation on a previous occasion; (b) a small business fails to exercise good faith in complying with the regulation; (c) a violation involves willful or criminal conduct; (d) a violation results in imminent or adverse health, safety, or environmental impact; or (e) the penalty or fine is assessed pursuant to a federal law or regulation, for which a waiver or reduction is not authorized.

The legislation does not apply with regard to: (1) emergency regulations; (2) State Crop Pest Commission matters; (3) State Livestock-Poultry Health Commission matters; (4) such regulatory proposals as state legislative or federally mandated provisions that do not allow discretion to consider less restrictive alternatives; and, (5) a federal regulation that has gone through the federal regulatory flexibility act, if the federal review process is the same as, or stricter than, the requirements of this legislation.

*STATUS: Having passed the General Assembly, **H.4130** was signed into law by the Governor on May 11, 2004 (Act 231).*

THURMOND MONUMENT TO INCLUDE ESSIE MAE WASHINGTON-WILLIAMS

The General Assembly passed **S.816**. This joint resolution directs the State House Committee to modify the monument erected on the grounds of the Capitol Complex in recognition of the accomplishments of the late Strom Thurmond, United States Senator from the Palmetto State, so as to include the name Essie Mae among the engraved names of his children, and to change the number of children listed on the monument from four to five. This modification must be funded entirely by private funds. The committee is empowered and directed to raise and receive private funds, grants, and gifts to carry out the purpose of this legislation.

*STATUS: Having passed the Senate and the House of Representatives, Joint Resolution **S.816** was ratified on June 2, 2004.*

VESTED RIGHTS ACT

See summary under Business/ Economic Development.

TAX ISSUES

MINIBOTTLES

The General Assembly passed a joint resolution proposing a constitutional amendment to eliminate minibottle liquor requirements. The joint resolution proposes to amend the South Carolina Constitution so as to eliminate the requirement that on-premises establishments are licensed to sell alcoholic liquors and beverages only in sealed containers of two ounces or less (minibottles). In place of this requirement, the proposed amendment authorizes the General Assembly to determine the size of containers in which alcoholic liquors or beverages are sold. The proposed constitutional amendment will be submitted to the State's voters at the upcoming general election.

STATUS: Having passed the Senate and the House of Representatives, Joint Resolution S.532 was ratified on June 2, 2004. The proposed constitutional amendment will be submitted to the State's voters at the upcoming general election.

MOTION PICTURE/COMMERCIAL ADVERTISEMENT INCENTIVES

See summary above under Business/Economic Development

MUNICIPAL BUSINESS LICENSE TAX ON TELECOMMUNICATIONS PROVIDERS

The General Assembly passed H.3530 which includes a provision authorizing a municipality to charge a telecommunications services provider a one-percent business license tax. The legislation provides that the maximum business license tax that may be levied by a municipality on the gross income derived from the sale of retail telecommunications services for the preceding calendar or fiscal year which either originate or terminate in the municipality and which are charged to a service address within the municipality regardless of where these amounts are billed or paid and on which a business license tax year beginning after 2003 is one percent of gross income derived from the sale of retail telecommunication services. These provisions replace current specifications for a business license tax of this kind.

STATUS: Having passed the House of Representatives and the Senate, H.3530 was ratified on June 3, 2004.

PROPERTY TAX

The General Assembly amended **H.3065**, the annual Department of Revenue "clean-up" bill, to include provisions which exempt from property tax an amount of fair market value of real property sufficient to limit to twenty percent any valuation increase attributable to a countywide appraisal and equalization program. The bill delineates instances in which the exemption does not apply, including but not limited to certain transfers of the property, value attributable to property or improvements not previously taxed, and renovations. The bill provides that once the taxable value of a property is reduced because of this exemption, that reduced value is effective until the next equalization and reassessment program. The bill provides that once a property is transferred and no longer eligible for the exemption, the property is subject to taxation in the tax year following the transfer at market value based on the sale or transfer of ownership or at the appraised value determined by the county assessor. The bill requires the closing attorney at a real estate transfer to notify the buyer that the property may be subject to taxation the next tax year at a value that reflects its fair market value. The bill specifies procedures which are required of a property owner to qualify for the exemption and provides penalties for property owners who obtain the exemption and are later found not eligible. The bill requires the Speaker of the House and the President *Pro Tempore* of the Senate to appoint, by January 14, 2014, a task force to study the effects of these provisions on homeowners and on the real estate industry and recommend changes in a report to the General Assembly by January 13, 2015.

*STATUS: **H.3065** was approved by the House and Senate and has been ratified (R.401).*

TEXTILE COMMUNITIES REVITALIZATION ACT

See summary above under Business/Economic Development

MAJOR LEGISLATION THAT DID NOT PASS

CAPITAL ACCESS PROGRAM FOR SMALL BUSINESSES

The House of Representatives approved and sent to the Senate **H.4990**, a bill establishing a Capital Access Program providing for flexibility in the making of loans by financial institutions to small businesses that fail to qualify for conventional or other guaranteed or assisted financing. The bill provides for the funding of a Loan Loss Reserve to repay participating financial institutions that suffer a loss on a loan. The bill provides for administration of the program by Business Development Corporation of South Carolina. The legislation establishes guidelines for selecting loan recipients and provides for record keeping and reporting requirements.

*STATUS: **H.4990** passed the House of Representatives on April 23, 2004, and was sent to the Senate where the bill was referred to the Judiciary Committee. The legislation did not pass before the adjournment of the 115th General Assembly.*

CAROLINA PUBLIC CHARTER SCHOOL DISTRICT

The House approved **H.5080**, a bill that creates the Carolina Public Charter School District (the District). The bill creates the District as a statewide public body which must be considered a local education agency eligible to receive state and federal funds and grants available for public charter and other schools. The bill provides that the District must not have a local tax base and may not receive local property taxes. The bill provides for governance of the District by a board with three members appointed by the Governor, three appointed by the Speaker of the House, and three appointed by the President *Pro Tempore* of the Senate. The bill provides for terms of service and authority of the board, including but not limited to the authority to exercise general supervision over public charter schools sponsored by the District and to grant charter status to qualifying applicants for public charter schools.

*STATUS: **H.5080** was approved by the House and was reported from the Senate Education Committee majority favorable with amendment, minority unfavorable. Upon sine die adjournment of the General Assembly, was pending on the Senate calendar.*

DAIRY STABILIZATION ACT

The House approved **H.5111**, the "South Carolina Dairy Stabilization Act." This bill creates a thirteen member South Carolina Milk Board (the Board), whose primary duties are to establish a fair market breakeven price for milk producers; to exercise general supervision over the state milk industry; and to mediate differences between milk producers, associations, and processors. Six members of the Board must be producers of milk who represent different geographical areas of the state and who are actively engaged in dairy production at the time of selection and throughout the member's term. Two members of the Board must be consumers; two members

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must be retailers; two members must be processors; and one member will be a consumer advocate. The bill provides for the Board to appoint an executive director who shall serve *ex-officio* as a non-voting Board member. Principal offices of the Board will be within the South Carolina Department of Agriculture building.

The bill provides that the Board is an instrumentality of the State and is authorized to make, adopt, and enforce regulations and issue and enforce orders necessary to carry out the purposes of the bill.

The bill requires and provides for buyer fees to be collected on all fluid milk produced in this State, and the bill requires that funds from these fees must be deposited into a special fund (the Dairy Producers Settlement Fund) and disbursed, as provided in the bill, to all producers in the State who sold or shipped milk in the month when prices fell below the fair market breakeven amount as determined by the Board.

The bill prohibits a milk "buyer" (defined as a person who purchases, markets, or handles fluid milk directly from a South Carolina producer) from engaging in the purchase of South Carolina milk until he has obtained a license from the Board. The Board is authorized, among other actions, to invoke a monetary penalty for buyers who violate the provisions of the bill. Funds from such penalties would be deposited into the Dairy Producers Settlement Fund.

The bill requires and provides for the Board to develop an accounting system designed to show for each buyer of fluid milk under the Board's supervision, the total purchases of South Carolina milk by the buyer and the sales of milk sold in this State. The bill further requires that buyers under the supervision of the Board use this system of accounting.

The bill provides that violations of the provisions of the bill are a misdemeanor punishable by fine or imprisonment, and multiple violations may result in license or permit revocation.

The bill requires the Board to prepare an annual budget and requires the Board to collect funds required for operation of the bill's provisions from the State's dairy producers. Expenses of the Board must be met by an assessment of up to one cent per gallon of milk produced in this State.

The provisions of the bill are repealed on July 1, 2011.

*STATUS: **H.5111** was approved by the House. The bill was reported favorable from the Senate Agriculture Committee and upon sine die adjournment of the General Assembly, the bill was on the Senate calendar with two Senators listed as desiring to be present.*

DRIVER'S LICENSE REINSTATEMENT/DUI

The House approved **H.4802**, a bill which revises procedures for reinstatement of a driver's license which has been revoked for driving under the influence. The bill also revises provisions regarding notification of suspension of a driver's license; unlawful use of a driver's license; fraudulent application for a driver's license; unlawful alteration of a driver's license; issue or sale of a fictitious driver's license; or use of another person's driver's license. The bill revises notification procedures regarding habitual offenders who are convicted of operating a vehicle while the decision of the Department of Motor Vehicles (DMV) prohibiting the operation is in effect. In such instances, the *court*, rather than the DMV, would notify the Solicitor or Attorney General and he shall cause the appropriate criminal charges to be lodged against the offender.

*STATUS: **H.4802** was approved by the House and upon sine die adjournment of the General Assembly, the bill was pending consideration in the Senate Judiciary Committee.*

ENVIRONMENTAL OFFENSES INCLUDED UNDER STATE GRAND JURY'S JURISDICTION

The House of Representatives approved and sent to the Senate **H.4790**, a bill expanding the State Grand Jury's jurisdiction to include environmental offenses. Under the bill, environmental offenses are those concerning the water, ambient air, soil, or land, including, but not limited to, violations of the State Safe Drinking Water Act, the Pollution Control Act, the Infectious Waste Management Act, the Hazardous Waste Management Act, the Solid Waste Policy and Management Act, the State Underground Petroleum Response Act, the Atomic Energy and Radiation Control Act, the South Carolina Mining Act, the Coastal Zone Management Act, and the Sediment and Erosion Control Act.

*STATUS: **H.4790** passed the House of Representatives on April 16, 2004, and was sent to the Senate. On May 27, the Senate amended the bill, gave it second reading approval, and ordered it to third reading with notice of amendments. The legislation did not pass before the adjournment of the 115th General Assembly.*

FINANCIAL LITERACY

The House approved **H.4819**, the Financial Literacy Instruction Act of 2004. This bill required the State Board of Education (the Board) to develop or adopt curricula (to be included in the S.C. Academic Standards of Instruction for K-12), materials, and guidelines for local school boards to use in implementing a program of instruction on financial literacy within courses currently offered in high schools in this State. The bill delineated items which must be included in such programs, including but not limited to information regarding: opening a bank account, balancing a checkbook, spending and credit, completing a loan application, personal insurance policies, computing state and federal income taxes, understanding local tax assessments, computing interest rates, understanding simple contracts,

contesting incorrect billings, savings and investing, and laws concerning finance. The bill also authorized the Board to establish a fund for receiving public and private contributions to defray the costs of relevant training for teachers; to provide rewards for schools, teachers, or students who win or achieve high levels of success in financial literacy competitions; to fund certain activities related to financial literacy education. Funds would be awarded as grants to local school boards to provide incentives for promoting financial literacy.

*STATUS: **H.4819** was approved by the House and received a favorable report from the Senate Education Committee. The bill was amended by the full Senate, but did not pass that body before sine die adjournment.*

FIREARMS RESTRICTIONS FOR CRIMINAL DOMESTIC VIOLENCE OFFENDERS

The House of Representatives approved and sent to the Senate **H.3130**, a bill providing firearms restrictions for criminal domestic violence offenders. The bill provides it is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this state firearms to a person convicted of criminal domestic violence of a high and aggravated nature. The bill revises provisions for domestic violence orders of protection so as to provide if the court finds that there is an imminent danger to the petitioner by the respondent, the court may order the respondent to surrender all firearms to the county sheriff as a condition of the order of protection. The Sheriff shall store the firearms for the duration of the order of protection. The bill provides that if a person is charged with a violent crime, criminal domestic violence of a high and aggravated nature, or criminal domestic violence, the court may order the person, as a condition of bond, only when requested or with the consent of the victim, to surrender to the County Sheriff all firearms which are owned or possessed by the defendant. The sheriff shall store the firearms until final disposition of the charges. The bill provides that the magistrates court has jurisdiction over an action seeking a restraining order against a person engaged in criminal domestic violence of a high and aggravated nature and criminal domestic violence. The court may not charge a filing fee for such a complaint and motion for a restraining order. The bill imposes the firearms restrictions on criminal domestic violence restraining orders issued by a magistrate.

*STATUS: **H.3130** passed the House of Representatives on April 14, 2004, and was sent to the Senate. On May 27, the Senate amended the bill, gave it second reading approval, and ordered it to third reading with notice of amendments. The legislation did not pass before the adjournment of the 115th General Assembly.*

GENERAL RESERVE FUND

The House approved **H.4906**, regarding the State's General Reserve Fund. Currently, State law requires the State Budget and Control Board to provide for a

General Reserve Fund, and requires that funds accumulating in excess of the annual operating expenditures must be transferred to the General Reserve Fund and the transfer must continue to be made in succeeding fiscal years until the accumulated total reaches three percent of the general fund revenue of the latest completed fiscal year. This bill provides that the transfer must continue until the accumulated total reaches three percent of the general fund, or such other percentage as may be required pursuant to Section 36, Article III of the Constitution of this State.

The House approved H.4907, also regarding the State's General Reserve Fund. This joint resolution proposes to amend the State Constitution so as to require an additional amount equal to one percent of state general fund revenues in the latest completed fiscal year to be held in the General Reserve Fund each time the General Assembly enacts legislation which cumulatively has raised the then existing amount of state general fund revenues which may be used for annual debt service on state general obligation debt.

STATUS: H.4906 and H.4907 were approved by the House and upon sine die adjournment of the General Assembly, both bills were pending consideration in the Senate Finance Committee.

INFRASTRUCTURE PRIORITY INVESTMENT ACT

The House of Representatives approved and sent to the Senate H.4354, the "South Carolina Infrastructure Priority Investment Act of 2003". This bill revises provisions relating to comprehensive plans of local planning commissions so as to provide for coordination between adjacent and other relevant jurisdictions during the local planning process. Adjacent and other relevant jurisdictions and agencies include such entities as counties, municipalities, public service districts, school districts, public and private utilities, and transportation agencies. The legislation adds two requirements that must be included in a local comprehensive plan: (1) a priority investment element which establishes, through coordination with all adjacent and other relevant jurisdictions and agencies, suitable areas where development and community facilities are recommended to be directed and to where state and federal funding for all growth-related projects and community facilities are recommended to be targeted, using incentive market-based principles; and (2) a transportation element which considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. The new transportation element of the local comprehensive plan must be developed in coordination with the plan's land use element to ensure transportation efficiency for existing and planned development.

STATUS: H.4354 passed the House of Representatives on February 19, 2004, and was sent to the Senate where it was referred to the Judiciary Committee. On May 19, 2004, the bill was reported out of the Judiciary Committee majority favorable with amendment, minority unfavorable. On May 27, the minority report was

withdrawn. The legislation did not pass before the adjournment of the 115th General Assembly.

ISOLATED WETLANDS ACT

The House of Representatives approved H.4934, the South Carolina Isolated Wetlands Act Of 2004. As approved by the House, this bill provides a finding that isolated wetlands in South Carolina are at risk of degradation. The bill provides a program for limiting such degradation and, where and when appropriate, provides for long-term restoration and enhancement of isolated wetlands that have degraded or have been lost in the past. "Isolated wetlands" are defined in the bill as those areas that are inundated or saturated by water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and that are not regulated under the federal Clean Water Act. The legislation specifically prohibits activities resulting in an impact to a Carolina Bay.

The bill provides that the State will implement an effective, balanced, statewide program to manage activities in and around isolated wetlands which balances isolated wetlands protection with economic growth; ensures that landowners are not denied the use of their property; avoids adverse impacts on the State's economy; streamlines the permitting process; and designates one state agency to implement the regulatory program.

The bill requires that the classification of an isolated wetland must be based on the determination of the appropriate federal agency, and provides that isolated wetlands are considered private property.

The bill authorizes and provides procedures for the Department of Health and Environmental Control (DHEC) to issue permits for the activities in isolated wetlands regulated under the bill. The bill allows applicants for permits to perform regulated activities in isolated wetlands of up to five contiguous acres without permit or DHEC approval. However, the bill requires proof of mitigation through notification to DHEC as provided in the bill. The bill requires that DHEC determine whether to issue a permit for an activity in isolated wetlands larger than five contiguous acres based on a sequential analysis as described in the bill.

The bill delineates certain specific activities which are not prohibited by or subject to regulation under the bill.

The bill provides for issuance by DHEC of general permits for any category of activities if DHEC determines that the activities in the category cause only minimal adverse environmental effects when performed separately, and shall have only minimal cumulative adverse effect on the environment. The bill provides that no general permit may be for a period of more than five years and may be revoked or modified under conditions specified in the bill.

The bill allows an applicant or other affected person to contest the granting or denial of an application through a proceeding pursuant to the Administrative Procedures Act.

*STATUS: **H.4934** was approved by the House and was reported from the Senate Agriculture and Natural Resources Committee majority favorable with amendment, minority unfavorable. Upon sine die adjournment of the General Assembly, the bill died on the Senate calendar with one Senator listed as desiring to be present.*

JUDICIAL ELECTIONS

The House of Representatives passed and sent to the Senate **H.4734**, a bill establishing a revised process for nominating judicial candidates for election by the General Assembly. Under the legislation, the Judicial Merit Selection Commission would release to the General Assembly the full list of individuals found qualified and fit for judicial office. Under current law, the Judicial Merit Selection Commission submits to the General Assembly only the list of the three individuals found most qualified. The bill eliminates the current one-year waiting period for a former member of the General Assembly to be elected to a judicial office. The bill provides, instead, that a member of the General Assembly may not file for a judicial office while the member is serving in the General Assembly. The bill also provides that no member of a legislator's immediate family may be elected to a judicial office while that legislator is serving in the General Assembly.

The Senate approved substantially different provisions which, notably, allow the Judicial Merit Selection Commission, upon a two-thirds affirmative vote, to expand the list submitted to the General Assembly from three to no more than six candidates.

*STATUS: The House of Representatives passed **H.4734** on April 15, 2004, and sent the bill to the Senate. On June 2, the Senate returned the bill to the House with amendments. On June 3, the House voted not to concur in the Senate amendments. The legislation did not pass before the adjournment of the 115th General Assembly.*

LOBBYISTS DISALLOWED FOR STATE AGENCIES

In 2003, the House of Representatives passed and sent to the Senate **H.3187**, a bill prohibiting state use of an independent contractor lobbyist. On June 2, 2004, the House returned **S.458** to the Senate with an amendment that added this prohibition to the Senate bill. The legislation provides that it is unlawful for a state agency, authority, or department to directly or indirectly hire or retain an independent contractor as a lobbyist. This provision does not include foundations established by

state-sponsored universities or institutions of higher education that do not receive appropriated funds on an annual basis.

STATUS: H.3187 passed the House on April 24, 2003, and was sent to the Senate where it has been referred to the Judiciary Committee. On June 2, 2004, the House returned S.458 to the Senate with an amendment that added the provisions of H.3187 to this Senate bill. The legislation did not pass before the adjournment of the 115th General Assembly.

NURSE LICENSURE COMPACT ACT

The House approved H.4291, a bill which enacts the "Nurse Licensure Compact Act". The National Council of State Boards of Nursing developed model legislation for a multi-state nurse licensure compact in 1998. If a nurse is licensed and is in good standing in a compact state, that license will allow the nurse to practice in any of the other compact states. The compact maintains a coordinated licensure information system to collect and share information on nurse licensure and enforcement actions. When a nursing license application is received in a party state, the licensing board must check through the coordinated licensure information system to verify whether the applicant holds or has ever held a license issued by any other state, whether there are any restrictions on the applicant's multi-state privilege, and whether any other adverse licensure action by any state has been taken against the applicant's license. The bill specifies the conditions under which a nurse may be issued a license to practice in participating and non-participating states. Under the compact a license to practice nursing issued by a home state to a resident in that state must be recognized by each party state as authorizing a multi-state licensure privilege to practice in each party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure, license renewal, and all other applicable home state laws. A party state may, in accordance with that state's due process laws, revoke, suspend, or limit the multi-state licensure privilege of any licensee to practice in its state and may take any other actions under its applicable state laws that are necessary to protect the health and safety of its citizens. The practice of nursing in a party state subjects a nurse to the jurisdiction of the nurse licensing board and the laws and the courts in that party state. If a party state takes an action against a nurse, it must notify the administrator of the coordinated licensure information system. The administrator must notify the home state of any actions taken by other states in the compact. The compact provides due process procedures for a nurse against whom an adverse licensure action is ordered. The bill provides that Beginning January 1, 2006, the State Board of Nursing shall require foreign-educated candidates for licensing as registered nurses to pass: (1) the National Council Licensure Examination (NCLEX); and (2) an English language proficiency test that determines whether or not the license applicant is proficient in conversational English with regard to medical terminology and the skills required of a registered nurse.

STATUS: H.4291 was approved by the House and upon sine die adjournment of the General Assembly, the bill was pending consideration in the Senate Medical

Affairs Committee.

PRIMARY ENFORCEMENT OF SEAT BELT LAWS

Last year, the House of Representatives approved and sent to the Senate H.3128, a bill providing for primary enforcement of seat belt laws. This bill authorized primary enforcement of seat belt and child restraint requirements by eliminating current statutory language which provides that a law enforcement officer must not stop a driver for a seat belt or child restraint violation in the absence of another violation of the motor vehicle laws. Under the legislation, a law enforcement officer must not stop a driver for a seat belt or child restraint violation except when the officer has probable cause for such a violation based on his clear and unobstructed view of a driver or an occupant of the motor vehicle who is not wearing a safety belt or is not secured in a child restraint system as required. The legislation expanded the provision under which a vehicle, driver, or occupant in a vehicle may not be searched solely because of a seat belt/child restraint violation by adding nor may consent to search be requested. The bill provided that a conviction for a seat belt or child restraint violation must not be reported to the offender's motor vehicle insurer.

Last year the House also added the above provisions to S.356, a bill regarding hearing-impaired drivers, and returned that bill to the Senate. After significant debate on the Senate floor, S.356 was continued on April 28, 2004.

STATUS: Last year, the House approved H.3128, and the Senate Transportation Committee reported the bill favorable, with a minority unfavorable report. After a protracted filibuster on the Senate floor, H.3128 died on the Senate calendar when the General Assembly adjourned sine die. S.356 was amended by the House last year to include the primary seat belt enforcement provisions, but the bill was continued by the Senate this year, which prevented further consideration of the bill.

PROPERTY TAX

The House and Senate approved differing versions of S.45, a bill dealing with property taxes. As approved by the House, the bill provides an exemption from property tax of an amount of fair market value of certain real property sufficient to eliminate any valuation increase attributable to a countywide appraisal and equalization program. The exemption does not apply to value attributable to property or improvements not previously taxed; real property transferred after the year in which the most recent countywide equalization program was implemented (with certain exceptions); and real property valued for property tax purposes by the unit evaluation method. With each subsequent equalization and reassessment program, the value of the property, reduced by the amount of exemption granted under the bill, may not increase except in the year following a disqualifying transfer in ownership. When the property is no longer eligible for the exemption due to a transfer, the property will be taxed in the tax year following the transfer at market

value based on the transfer of ownership or at the appraised value. The bill includes a requirement for closing attorneys to notify buyers at real estate transfers that the property may be subject to taxation at fair market value during the next tax year. The bill outlines procedures for qualifying for the exemption and includes penalties for a person who signs a certification declaring that the property is eligible, obtains the exemption, and is subsequently found to be ineligible. The bill also provides for a task force to be appointed in 2014 by the Speaker of the House and the President *Pro Tempore* of the Senate to study the effects of these provisions on homeowners and on the real estate industry, and report findings and recommendations to the General Assembly by January 2015. The House also approved H.4271, which includes these same provisions regarding exemption from property tax of an amount of fair market value of certain real property sufficient to eliminate any valuation increase attributable to a countywide appraisal and equalization program.

STATUS: The House and Senate approved differing versions of S.45. The House returned its amended version of S.45 to the Senate on April 28. On April 29, the Senate recommitted the bill to the Senate Finance Committee. H.4271 was approved by the House and upon sine die adjournment of the General Assembly, was pending consideration in the Senate Finance Committee.

REQUIREMENT FOR LOCAL SCHOOL DISTRICT MAINTENANCE OF FINANCIAL EFFORT

The House approved H.4557, a bill which repealed the current section of law which requires a certain level of financial effort per pupil from each school district. As approved by the House, this provision must be waived by the State Department of Education for districts exceeding 1.0 on their local tax effort.

STATUS: H.4557 was approved by the House and was pending consideration in the Senate Education Committee when the General Assembly adjourned sine die.

RESTRICTED DRIVER'S LICENSE/DUI

The House approved H.4801, a bill which provides that a person who is issued a special restricted driver's license after his license is suspended for refusing to submit to alcohol concentration testing or for registering a certain level of alcohol concentration is ineligible for issuance of a special restricted driver's license. The bill also provides that only one provisional driver's license may be issued to a person in a ten year period.

STATUS: H.4801 was approved by the House as summarized above. The bill was recalled from the Senate Judiciary Committee, amended, and returned to the House

on June 2. On June 3, the bill died on the House calendar under a 24 hour point of order.

SAME SEX MARRIAGES NOT RECOGNIZED UNDER S.C. LAW

The House of Representatives approved and sent to the Senate H.4657, a bill providing for no recognition of same sex marriages under South Carolina law. The legislation provides that marriage in this state and its political subdivisions is exclusively defined as a union between one man and one woman. The legislation provides that public acts, records, judicial proceedings, licenses issued by another jurisdiction, and any other governmental recognition of same sex marriage are of no legal force or effect and will not be recognized by this state or its political subdivisions in accordance with the strong public policy of South Carolina. The legislation provides that the recognition or extension by this state or its political subdivisions of the specific statutory benefits of a legal marriage to nonmarital relationships between persons of the same sex or different sexes is against the strong public policy of this state and its political subdivisions. The legislation voids any public act, record, or judicial proceeding of this state, its political subdivisions, and any other jurisdiction that would provide for such an extension.

STATUS: H.4657 passed the House of Representatives on March 18, 2004, and was sent to the Senate where it was referred to the Judiciary Committee. On May 13, 2004, the bill was recalled from the Senate Judiciary Committee. On June 2, 2004, the House returned S.458 to the Senate with an amendment that added the provisions of H.4657 to this Senate bill. The legislation did not pass before adjournment of the 115th General Assembly.

SCHOOL DISTRICTS PROPERTY TAX RELIEF ACT

The House approved H.3612, the "South Carolina School Districts Property Tax Relief Act." This bill authorizes the imposition of a one percent sales and use tax within a county for the distribution to the school districts located wholly or partially within the county. The board of trustees of a school district, before the expenditure of the proceeds of the tax, must by resolution determine the specific purposes for which the proceeds of the tax must be expended. The proceeds must be applied only to reduce *ad valorem* property taxes imposed to pay debt service on general obligation bonds of that school district or otherwise defray the cost of capital improvements within that school district. The tax authorized by this legislation may be imposed within a county upon the adoption of an approving resolution by the boards of trustees of each school district, and the subsequent approval of the imposition of the tax by referendum open to all qualified electors residing in the county. The tax may be imposed for a period not to exceed seven years. A referendum required by this legislation may only be conducted in even-numbered years at the same time as the general election with the polling places of all precincts required to be open. The gross proceeds of the sale of items subject to a maximum sales tax under state law are exempt from the tax imposed by this

legislation. The gross proceeds of the sale of food which may lawfully be purchased with United States Department of Agriculture food coupons are also exempt from the tax imposed by this legislation. The tax may be renewed and imposed within a county in the same manner as proceedings for the initial imposition of the tax. A referendum on the question of reimposition of a tax shall not be held more than two years prior to the date upon the tax then in effect is scheduled to terminate, provided that any reimposition shall become effective immediately upon the termination of the tax previously imposed.

*STATUS: **H.3612** was approved by the House in January 2004 and was referred to the Senate Finance Committee. On May 19, the Senate Finance Committee reported the bill favorable with amendment. Upon sine die adjournment of the General Assembly, **H.3612** was pending second reading on the Senate calendar with two Senators listed as desiring to be present.*

SOUTH CAROLINA HEALTH AND HUMAN SERVICES REORGANIZATION AND ACCOUNTABILITY ACT

In March of 2003, the House approved **H.3768**, the "South Carolina Health and Human Services Reorganization and Accountability Act." On March 30, 2004, the Senate Medical Affairs Committee reported the bill out favorable with amendments. As passed by the House, the bill reforms the state's Medicaid system, and reorganizes and restructures state health and human services agencies as follows:

- **DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)**
 - Policy and Planning of the Continuum of Care of the Governor's Office is transferred to DHHS Office for Services for Emotionally Disturbed Children;
 - Children's Case Resolution of the Governor's Office transferred to DHHS Office of Children's Services;
 - Licensing and monitoring of out-of-home placements of the Department of Social Services (DSS) moved to DHHS;
 - Licensing of out-of-home placements of the Department of Health and Environmental Control (DHEC) moved to DHHS;
 - Department of Alcohol and Other Drug Abuse Services (DAODAS) is moved to DHHS as a new Office;
 - Inpatient alcohol and drug treatment services of the Department of Mental Health (DMH) are moved to DHHS under the new Office of Alcohol and Other Drug Abuse Treatment Services;
 - Inpatient alcohol and drug treatment services of the Department of Vocational Rehabilitation (VR) may be transferred to this Office if certain conditions are met and after submission of a plan to the Joint Legislative Committee (as described below);
- **DEPARTMENT OF MENTAL HEALTH (DMH)**

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- DMH becomes a Cabinet Agency;
 - Client and family services of the Continuum of Care transferred to DMH.
- Managed Treatment Services of DSS remain at DSS pending approval of a plan submitted to the Joint Legislative Committee;
- Budget and Control Board is to assist in implementation of the Act;
- Health and Human Services agencies must co-locate offices and consolidate programs when possible.
- **DEPARTMENT OF INFORMATION TECHNOLOGY FOR HEALTH AND HUMAN SERVICES AGENCIES**
 - Manages and administers all information technology for DSS, DHHS, Department of Disabilities and Special Needs, DMH, VR, DHEC;
 - Director appointed by Governor with advice and consent of the House and the Senate;
 - Director must develop a coordinated strategic plan for information resources management as provided in the Act.
- **JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON MEDICAID AND HEALTH CARE (the Oversight Committee)**
 - Seven appointed members - three of whom must be members of the Senate appointed by the Chairman of the Senate Finance Committee, one of which must be a member of the minority party; three of whom must be members of the House of Representatives appointed by the Chairman of the House Ways and Means Committee, one of which must be a member of the minority party; and one of whom must be the Governor or the Governor's appointee.
 - Charged to study the State Medicaid plan, to review efforts of the state Medicaid agency, and to recommend changes to make the plan more easily understood, more stable, and more affordable.
- **STATE OFFICE OF MEDICAID AND HEALTH CARE AUDITS**
 - Established to conduct independent audits, reviews, inspections, and investigations to prevent and detect waste and fraud and to promote accountability, economy, effectiveness, and efficiency;
 - Agencies under this office's purview are DSS, DHHS, DDSN, DMH, VR, DHEC, and the Department of Information Technology;
 - Audit director appointed by and serves under the Oversight Committee;
 - Audit director must report to the Oversight Committee, at least semi-annually, information regarding problems, audit reports, compliance with previous audit recommendation, and status on fraud and abuse activity and annual audit plan.

- **MEDICAID REFORM INITIATIVES**

- Department of Revenue is to implement electronic interface of information systems for eligibility determination;
- DHHS is to report to the Oversight Committee, changes to Medicaid that will have a fiscal impact;
- DHHS is to report to the Oversight Committee the number of beneficiaries on Medicaid who do not pay for services as required by law;
- Department of Insurance is to collect information to help DHHS identify persons on Medicaid who have other insurance;
- DHHS is to prepare cost containment plan when spending exceed projected General Funds projected growth;
- DHHS is to implement a Medicaid Mandatory Managed Care Program;
- DHHS is to implement a pilot project to assess the viability of privatizing eligibility determination of Medicaid applicants
- Establishes a Task Force on Emergency Room Diversion to be led by DHEC
- DHHS to enter into contractual agreements for the management and operation of skilled nursing facilities formerly under the jurisdiction of DMH.

- **NURSING HOME FRANCHISE FEE** of 2002 is repealed;

- The Act establishes the **SOUTH CAROLINA RETIREES AND INDIVIDUALS POOLING TOGETHER FOR SAVINGS (SCRIPTS)** Program to be administered by DHHS.

- Purpose of the SCRIPTS Program is to combine the purchasing power of State citizens age sixty-five or older (who are not eligible for Medicaid) to reduce prescription drug costs through combined negotiating power for pharmaceutical pricing and rebates;
- The program would be funded entirely from annual enrollment fees of program participants;
- DHHS is required: to submit an implementation and administration plan for the program (as described in the bill) to the Oversight Committee by December 30, 2003; to maintain data to allow evaluation of the program's cost effectiveness; and to report to the Governor and the Oversight Committee as provided in the bill.

- **SENIORS FORUM**

- Established in the Act, with twenty-one voting members;
- Charged to:
 - Support the Office of Aging of the Department of Human Services;
 - Make recommendations regarding responsibilities and roles for state, regional, and local entities, and services to seniors;

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- Sponsor public forums in advance of submission of the Office on Aging's four-year plan and respond to the Office of Aging's annual draft plan.
- **NURSING HOMES**
 - Requires DHHS to enter into contractual agreements for the management and operation of skilled nursing facilities formerly under DMH.
- **PREVENTION OF YOUTH ACCESS TO TOBACCO**
 - Strengthens laws against underage tobacco purchase and use and sets penalties.
- **TOBACCO SETTLEMENT RECEIPTS AND BONDS**
 - Provides for additional receipts from Tobacco Settlement funds to be credited to the general fund rather than being deposited as is currently required;
 - Permits the use of tobacco settlement revenues and the proceeds of bonds secured by these revenues to refund or purchase these bonds.

*STATUS: **H.3768** was approved by the House in 2003. The bill was reported favorable with amendments from the Senate Medical Affairs Committee in March of 2004. Upon sine die adjournment of the General Assembly, the bill died on the Senate calendar with four Senators listed as desiring to be present.*

SOUTH CAROLINA RESTRUCTURING ACT OF 2004

The House approved **H.4127**, the South Carolina Restructuring Act of 2004. This bill establishes the **Department of Administration** (the Department), an Executive Branch department headed by a director appointed by the Governor. Various offices, divisions, or components of the State Budget and Control Board (the Board), Office of the Governor, and other agencies are transferred to and incorporated into the Department, including: Facilities Management and Business Operations and Fleet Management programs of the Division of General Services; Offices of Executive Policy and Programs, Economic Opportunity, and Volunteer Services; Intergovernmental and Community Relations; Developmental Disabilities Council; Continuum of Care; Children's Foster Care; Veterans' Affairs; Commission on Women; Victims' Assistance; Ombudsman; and Small and Minority Business.

The bill also establishes (within the Board) and provides for the **Division of the Office of the State Chief Information Officer**, to be supervised by the **State Chief Information Officer**. The Division is created to provide leadership and direction for the use of information technology within South Carolina government. This division is required to, among other things: develop a statewide plan for information

technology; develop a process for review and approval of information technology initiatives and plans of governmental bodies; monitor information technology initiatives approved by the Board; develop policies, methods, standards, and procedures for management of information technology investments throughout their entire life cycles; oversee development of statewide information technology projects of governmental bodies; plan and forecast future needs for information technology; and evaluate information technology of governmental bodies to determine whether the merger of information technology and related resources is justified, as provided for in the bill.

The bill also creates and provides for the **Joint Information Technology Review Committee**, a joint committee of the General Assembly responsible for: reviewing reports and recommendations on information technology initiatives to determine if the expenditure of funds for the initiatives is justified; recommending to the Board information technology initiatives and priorities of future initiatives; and reporting to the General Assembly annually or upon request.

The bill also establishes and provides for the **Information Technology Business Case Review Panel** to review information technology initiatives of governmental bodies and advise the Chief Information Officer on development and implementation of information technology standards, policies, and procedures. The bill establishes and provides for the **Information Technology Architecture Oversight Panel** to advise the Chief Information Officer and to recommend and implement a process to assess if information technology initiatives adhere to the coordinated statewide strategic plan for information technology and the information technology plan of the governmental body proposing the information technology initiative, and to assess the soundness of the initiative.

The bill establishes and provides for an **Information Technology Innovation Fund** to be administered by the Division for the purpose of providing incentives to governmental bodies to implement enterprise information technology initiatives and electronic government projects. Monies for this fund would come from the state budget process and from grants, gifts, donations, or other money.

The bill creates and provides for the **Office of the State Inspector General** as a division within the Department of Administration to be headed by the **State Inspector General**, appointed by the Governor. This office and position are established to, among other things, find and eradicate fraud, waste, misconduct, and abuse within executive branch government agencies; keep heads of executive agencies and the Governor informed about such findings; and provide leadership and control over satellite Inspector General offices in designated executive agencies which would report to and operate under the Office of the State Inspector General. The bill requires the State Inspector General to report to and cooperate with the State Attorney General and the Board regarding violations of criminal law and regarding instances when a civil action should be initiated by the State.

*STATUS: **H.4127** was approved by the House. On May 6, 2004, the bill was polled out of the Senate Judiciary Committee majority favorable with amendment, with a minority unfavorable. The bill died on the Senate calendar upon sine die*

adjournment of the General Assembly.

SOUTH CAROLINA SUNSET COMMISSION

The House approved H.5129, a bill which establishes and provides for the South Carolina Sunset Commission (the Commission) and a Sunset Review Division (the Division) of the Legislative Audit Council. The Division is established to conduct sunset reviews of certain state agency programs and to report on their determination as to whether the programs have outlived their usefulness or must be changed. The bill provides for termination of the programs and functions of specific agencies for each year as provided in the bill beginning June 30, 2005, and continuing through June 30, 2016. The bill provides that the existence of any state agency or program may be reauthorized by the General Assembly for periods not to exceed twelve years. Newly created agencies shall exist for up to twelve years, or a lesser period of time if so designated by the General Assembly at the time of the agency's creation. The bill also provides for termination of an agency when legislation to reauthorize its existence is not enacted.

STATUS: H.5129 was approved by the House and is pending consideration in the Senate Judiciary Committee.

STATE INCOME TAX REDUCTION

The House approved H.4765, which beginning with the 2005 tax year, reduces the current seven percent top marginal rate of state individual income tax in annual increments of .225 percent until a permanent top marginal rate of 4.75% is attained. The bill provides that beginning with the top marginal rate applicable for taxable year 2006, the reduction must not be made for that taxable year if estimated general fund revenue growth is less than two percent of the most recent estimate by the Board of Economic Advisors of general fund revenues for the current fiscal year. No reduction in the top marginal rate may exceed .225 for any one taxable year. The bill also provides that no reductions in the income tax rates provided for in this legislation for any taxable year may occur unless the Board of Economic Advisors certifies that sufficient general fund revenues for the fiscal year immediately following the reduction will remain available for the General Assembly in the annual general appropriations act for that year to maintain K-12 education funding at the level of the previous year.

STATUS: H.4765 was approved by the House as summarized above. The bill was reported from the Senate Finance Committee favorable with amendment, with a minority unfavorable report, and was pending on the Senate calendar when the General Assembly adjourned sine die. On May 19, the House amended S.813 to include the income tax reduction plan and sent that bill back to the Senate for consideration of House amendments. The Senate recommitted S.813 to Senate Finance on June 2 and the bill died in committee upon sine die adjournment.

TORT REFORM

The House of Representatives approved and sent to the Senate two bills establishing **tort reform** provisions.

The House approved and sent to the Senate **H.3744**, the **South Carolina Economic Development, Citizens, and Small Business Protection Act**. This legislation provides comprehensive revisions for the way in which the state's judicial system handles torts. A tort is a private or civil wrong or injury, including an action for bad faith breach of contract, for which the court provides a remedy in the form of an action for damages. Provisions of the legislation include:

The legislation establishes new provisions for **venue**. The legislation provides that civil actions against a resident individual defendant must be tried in the county where the cause of action arose or where the defendant resides. An action against a nonresident individual must be tried in the county where the cause of action arose. An action against a domestic corporation must be tried in the county of the corporation's principle place of business or where the cause of action arose. An action against a foreign corporation must be tried in the county where the corporation has its principle place of business in this State or where the cause of action arose. The legislation establishes criteria for determining a principal place of business. Current law provides the court may change the place of trial when the county designated is not proper, when there is reason to believe a fair and impartial trial could not take place in the designated county, or the convenience of the witnesses would be promoted by the change. This legislation requires the court to change venue in these circumstances. The legislation eliminates certain specific venue statutes such as those that apply to claims brought against motor carriers.

The legislation establishes new provisions regarding **frivolous lawsuits**. The legislation provides a pleading must be signed by at least one attorney of record, or, if the party is not represented by an attorney, the party must sign the pleading. The signature certifies to the court that the person has read the document and believes, in good faith, the pleading is not frivolous. The attorney may be sanctioned for filing a frivolous pleading, motion, or document and for making frivolous arguments. The party may be sanctioned if he fails to disclose facts necessary to put his attorney on notice that the claim or defense is frivolous. If a document is signed in violation of these provisions, the court may impose an appropriate sanction upon the violator including: an order for the party to pay reasonable costs and attorney's fees; an order for the attorney to pay a reasonable fine to the court; or, a directive of a nonmonetary nature designed to deter future misconduct. The attorney or party must be notified before the imposition of sanctions. They then have thirty days to withdraw the document or argument, respond to the allegations, or mitigate the effects of the violation. If the court imposes a sanction, they must report their findings to the Commission on Lawyer Conduct.

In an action alleging **professional malpractice**, the plaintiff must file with the complaint, an affidavit of an expert witness specifying at least one negligent act

and the factual basis for each claim. The expert must be licensed and either board certified or have actual professional knowledge and experience in the area of practice in which the opinion is to be given.

This bill revises the **statute of limitations for filing an action for a construction defect**. Current law provides that no actions to recover damages in these situations may be brought more than thirteen years after substantial completion of the improvement. The legislation lowers the statute of repose to eight years.

The legislation establishes provisions regarding **Notice and Opportunity to Cure Construction Defects**. The legislation provides that prior to filing a lawsuit against a contractor, engineer, architect, etc. for a defect in an improvement to real property, the plaintiff must provide notice of the defect and give the defendant the right to cure the defect before the lawsuit is filed. The legislation revises current law relating to residential improvements to provide the filing of these claims tolls the statute of limitations until such time as the defect is cured or the claim is considered denied. If a settlement cannot be reached within a 90-day time period, the claim is considered denied and the lawsuit may be filed. The legislation also establishes new provisions regarding Notice and Opportunity to Cure Non-Residential Construction Defects, which applies to all other types of property.

The legislation provides that **postjudgment interest rate** is equal to the prime rate as listed in the Wall Street Journal plus 4%.

The legislation provides for the **South Carolina Noneconomic Damage Awards Act**. The category of noneconomic damages is established to cover damages pertaining to quality of life that are not readily quantifiable in dollar amounts such as damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, or humiliation. The legislation places a cap of 2 million dollars on the noneconomic damages that a prevailing plaintiff in a personal injury action may be awarded. The plaintiff may also be awarded all actual economic damages.

The legislation provides that in actions where **punitive damages** are sought, the jury must determine and state the amount of any punitive damages separately from the amount of compensatory damages. Except in the case of fraud or intentional torts, punitive damages are limited to nine times compensatory damages. If the jury awards more than nine times, the court must reduce the award. The jury is not informed about the limit or any reduction. Under the legislation, all civil actions tried before a jury that involve punitive damages shall be conducted in a bifurcated trial before the same jury. In the first stage of the trial the jury shall: (1) determine and assign liability among the parties; (2) determine and award compensatory damages against the liable parties; (3) determine and award noneconomic damages against the liable parties; and, (4) determine if punitive damages are warranted against the liable parties. The jury must determine that the liable party's conduct was willful and wanton in order to make a finding that punitive damages are appropriate. No evidence of the defendant's net worth will be admissible during the first stage of a bifurcated trial unless admissible for some purpose other than the

amount of punitive damages. If there is a finding that the conduct of the liable party warrants punitive damages, the jury, in the second stage of the trial, shall consider only the amount of punitive damages to be awarded against the liable party. In making its determination the jury shall consider the following factors: (1) the liable party's degree of culpability; (2) duration of the conduct; (3) the liable party's awareness or concealment of the conduct; (4) the existence of similar past conduct; (5) the likelihood that an award will deter this party or other parties from similar conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) the defendant's ability to pay; and (8) any other factor the court considers necessary in order for the jury to make an adequate and informed determination.

The legislation revises **joint and several liability** provisions that pertain to instances where more than one tortfeasor is found to be liable. Current law provides liability among joint tortfeasors is both joint and several meaning that any tortfeasor may be responsible for the entire amount of the judgment. Under the legislation, each defendant against whom recovery is allowed is liable to the claimant only for the defendant's proportionate share of the recoverable damages. The jury or court is required to determine the amount of damages and the percentage of liability for each defendant. When damages from a liable defendant are determined to be uncollectible, a procedure is established for reallocating the uncollectible amount among the other defendants.

The House also approved and sent to the Senate a second Tort Reform measure, **H.4464, the Medical Malpractice and Patient Safety Reform Act**. The legislation establishes a process under which all medical malpractice claims will be reviewed prior to being filed with the court system. To begin a medical malpractice proceeding, a claimant is required to send a demand letter to the Health Care Provider. This tolls the statute of limitations. The claim is submitted to a Medical Review Panel made up of physicians from the same specialty or area of practice. The panel reviews the claim and determines whether the claim has merit. The panel's determination is not admissible in any court proceedings. The panel does not certify the lawsuit. The opinion is forwarded to the health care provider's insurer who has 60 days after receipt of the opinion to adjust the claim. After the adjustment period, the claimant may then proceed to file his action in court. Prior to trial, the parties must participate in mediation or arbitration. The legislation imposes a \$300,000 cap on damages awarded for pain and suffering in medical malpractice liability cases. The jury is not informed of the cap. Pain and suffering does not include permanent disability, disfigurement or scarring, paralysis, or loss of limb or any organ. The cap is adjusted annually for cost of living increases. The legislation includes provisions concerning Joint and Several Liability, Contribution, and Frivolous Lawsuits as found in H.3744.

The legislation authorizes a judge to make a determination of "unjustifiable conduct" on the part of a testifying expert. If such a finding is made the expert is subject to the jurisdiction of the South Carolina Board of Medical Examiners. The Board of Medical Examiners is authorized to charge licensure fees in an amount sufficient to carry out its required duties and to investigate complaints effectively.

Under the legislation, the Division of Health and Demographics within the Budget and Control Board shall develop procedures in conjunction with the Board of Medical Examiners that allows that office to keep records of individual Healthcare Providers outcomes. This information shall be made public. In the case of hospitals that name of the hospital will be included in the case of individual healthcare providers the names will be withheld.

The legislation provides that an insurer issuing a policy of healthcare provider medical malpractice insurance shall offer, as a part of the policy or as an optional endorsement to the policy, deductibles and policy limits optional to the policyholder.

Under the legislation, the State Treasurer shall relinquish the management of funds in the Patient's Compensation Fund to the fund's Board of Governors.

STATUS: The House of Representatives sent H.3744 and H.4464 to the Senate on January 22, 2004, where the bills were referred to the Judiciary Committee. On April 14, H.3744 was reported out of the Senate Judiciary Committee majority favorable with amendment, minority unfavorable. On May 27, the Senate gave the bill second reading approval and ordered it to third reading with notice of amendments. The legislation did not pass before the adjournment of the 115th General Assembly.

UNIFORM STATEWIDE VOTING SYSTEM

In 2003, the House of Representatives and the Senate passed different versions of legislation providing for a uniform statewide voting system. On May 19, 2004, the House Judiciary Committee reported out S.1071 with an amendment that would add the House-approved version of the voting system legislation to this Senate bill. As approved by the House, the legislation provides that the State Election Commission shall: (1) approve and adopt one voting system to be used by authorities charged by law with conducting elections; (2) support the authorities charged by law by providing training for personnel in the operation of the voting system approved and adopted by the commission; and (3) support all aspects of creating the ballots and the database of this voting system. Under the bill, a vote recorder or optical scan voting system may not be approved for use in the State unless qualified by the National Association of State Election Directors as meeting or exceeding the minimum requirements of the Federal Election Commission's national voting system standards. The legislation provides that the act takes effect upon approval by the Governor and when funding is available to implement the requirements of the legislation.

STATUS: H.3777 passed the House and Senate in different versions in 2003. On June 1, 2004, the House returned S.1071 to the Senate with an amendment that added the House-approved version of the voting system legislation to this Senate bill. The legislation did not pass before adjournment of the 115th General Assembly.

VIOLENT CRIME CONVICTIONS RECORDED ON DRIVERS' LICENSES

The House of Representatives approved and sent to the Senate H.3827, a bill requiring convictions for violent crimes to be recorded on drivers' licenses and special identification cards. The legislation provides that a person who has been convicted of or pled guilty or no contest to a felony designated as a violent crime on or after January 1, 2005, must have an identifying code to be determined by the Department of Motor Vehicles affixed to his driver's license or special identification card at the time the person obtains or renews the driver's license or special identification card. The code must be developed by the department and made known to the appropriate law enforcement officers and other judicial officials of this State. The legislation provides that a person convicted of or pleading guilty or no contest to a violent crime on or after January 1, 2005, in this State shall, surrender his South Carolina driver's license or special identification card to the court. The clerk of court within ten days shall transmit the driver's license or special identification card, if applicable, together with notice of the felony and whether or not it is a felony considered to be a violent crime, to the Department of Motor Vehicles. The driver's license or special identification card is considered revoked and the department shall keep a record of the revocation. If the felony that the person was convicted of or pled guilty or no contest to requires the suspension or revocation of his driver's license or special identification card, the driver's license or special identification card must not be returned to the person. The bill provides that when a person has been free of additional convictions of violent crimes for ten years after he has completely satisfied the terms of his sentence, the person may file an application with the Department of Motor Vehicles to have the identifying code contained on his driver's license removed. The bill provides that the intent of placing a code on a driver's license that identifies a person who has been convicted of a felony considered to be a violent crime is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens and law enforcement officers.

STATUS: H.3827 passed the House of Representatives on April 1, 2004, and was sent to the Senate where it was referred to the Judiciary Committee. The legislation did not pass before adjournment of the 115th General Assembly.

YOUTH ACCESS TO TOBACCO PREVENTION ACT

In 2003, the House of Representatives passed and sent to the Senate the "Youth Access to Tobacco Prevention Act." On May 19, 2004, the House Judiciary Committee reported out S.1071 with an amendment that would add the provisions of the "Youth Access to Tobacco Prevention Act" to this Senate bill. This legislation revises laws prohibiting the sale of tobacco to underage individuals and establishes new provisions regarding youth access to, and possession of, tobacco products. Under the revised provisions regarding underage tobacco sales provided in the legislation, it is unlawful for a person to sell a tobacco product to an individual who does not present upon demand proper proof of age. Proof of age is

not required from an individual who the person reasonably believes to be over twenty-seven years of age. Failure to require identification to verify a person's age shall be used as evidence of knowledge and intentional violation of this provision unless the person knows the individual is at least eighteen years of age. Proof that is demanded, is shown, and reasonably is relied upon for the individual's proof of age is a defense to an action initiated under these provisions. To determine whether a person believes an individual is at least twenty-seven years of age, a court may consider, but is not limited to considering, proof of the individual's general appearance, facial characteristics, behavior, and manners. These provisions do not apply to mail order sales. The bill revises criteria for what will be accepted as proof of age so as to limit it to a driver's license or identification card issued by this state, or a United States Armed Services identification card. The bill requires retail distributors of tobacco products to train their retail sales employees regarding these new procedures. In lieu of other pertinent penalties, a retail establishment that fails to comply with this training requirement must be fined not more than one thousand dollars.

The legislation provides that tobacco products may be accessible only in vending machines located in an establishment: (1) which is open only to persons who are eighteen years of age or older; or (2) where the vending machine is under continuous control by the owner or licensee of the premises, or an employee of the owner or licensee, can be operated only upon activation by the owner, licensee, or employee before each purchase, and is not accessible to the public when the establishment is closed. Individuals performing these duties in vending machine sales are subjected to the legislation's requirements for demanding proof of age. Vending machines that distribute tobacco products in establishments must meet these requirements within one hundred twenty days after the effective date of this provision or must be removed.

Under the bill, it is unlawful for an individual less than eighteen years of age to purchase, accept receipt, attempt to purchase, or attempt to accept receipt of a tobacco product, or present or offer to a person proof of age that is false or fraudulent for the purpose of purchasing or possessing a tobacco product. However, a person less than eighteen years of age may be enlisted by local law enforcement agencies to test a community's compliance with this section and to reduce the extent to which tobacco products are sold or distributed to underage individuals when the testing is under the direct supervision of the law enforcement agency and with the individual's parental consent. The bill also authorizes such an individual to be enlisted by the South Carolina Department of Alcohol and Other Drug Abuse Services, or a county alcohol and drug abuse authority to test an outlet's compliance or to collect data for the federally mandated Youth Access to Tobacco Study. The bill provides that it is unlawful for an individual less than eighteen years of age to possess a tobacco product. This provision does not apply to the possession of tobacco products by an individual less than eighteen years of age who delivers tobacco products as a part of his employment responsibilities. A person or individual who intentionally or knowingly violates a provision contained in this legislation either in person, by agent, or in any other way, is guilty of a misdemeanor and, upon conviction, must be punished as follows: (1) for a first offense, by a fine not less than one hundred dollars; (2) for a second offense, which

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occurs within three years of the first offense, by a fine not less than two hundred dollars; and (3) for a third or subsequent offense, which occurs within three years of the first offense, by a fine not less than three hundred dollars. All fines must be placed in the state general fund and distributed in the following manner: (a) one-half must be distributed to the treasurer of the county in which the conviction occurred; and (b) one-half must be distributed to the county alcohol and drug abuse commission and used for funding youth smoking prevention programs. A violation of a provision of this legislation is triable exclusively in either municipal or magistrate court. Instead of the penalties listed above, a court may require an individual who is less than eighteen years of age who illegally purchases or possesses a tobacco product to perform not less than twenty hours of community

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service for a first offense and not less than forty hours of community service for a second or subsequent offense. A person who is less than eighteen years of age and who has been convicted of violating a provision of this legislation may have his record expunged upon becoming eighteen years of age if he has paid any fine imposed upon him and successfully completed any court-ordered community service.

STATUS: In 2003, the "Youth Access to Tobacco Prevention Act" passed the House of Representatives as H.3084 and as part of H.3768, the South Carolina Health and Human Services Reorganization and Accountability Act. On May 27, 2004, the House approved an amendment to S.1071 that added the provisions of the "Youth Access to Tobacco Prevention Act" to this Senate bill. The legislation did not pass before adjournment of the 115th General Assembly.

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